



# HAWAI‘I ENVIRONMENTAL IMPACT STATEMENT LAWS

## Unofficial Compilation – October 2019

### CONTENTS

Acronyms and Abbreviations.....	vi
Introduction.....	vi
PART 1: The EIS Statute and Rules .....	1
HRS Chapter 343, Environmental Impact Statements .....	1
§343-1 Findings and purpose. ....	2
§343-2 Definitions. ....	3
§343-3 Public records and notice.....	5
§343-4 REPEALED. ....	6
§343-5 Applicability and requirements. ....	6
§343-5.5 Exception to applicability of chapter. ....	13
§343-6 Rules. ....	13
§343-6.5 Waiahole water system; exemption. ....	15
§343-7 Limitation of actions. ....	15
§343-8 Severability. ....	17
HAR Chapter 11-200.1, Environmental Impact Statement Rules.....	18
Subchapter 1 Purpose.....	19
§11-200.1-1 Purpose. ....	19
Subchapter 2 Definitions .....	20
§11-200.1-2 Definitions. ....	20
Subchapter 3 Computation of Time.....	24
§11-200.1-3 Computation of time.....	24
Subchapter 4 Filing and Publication in the Periodic Bulletin .....	24
§11-200.1-4 Periodic bulletin.....	24
§11-200.1-5 Filing requirements for publication and withdrawal. ....	25
§11-200.1-6 Republication of notices, documents, and determinations. ....	28
Subchapter 5 Responsibilities.....	28
§11-200.1-7 Identification of approving agency and accepting authority.....	28
Subchapter 6 Applicability.....	30
§11-200.1-8 Applicability of chapter 343, HRS, to agency actions.....	30
§11-200.1-9 Applicability of chapter 343, HRS, to applicant actions.....	30

§11-200.1-10 Multiple or phased actions. ....	32
§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions. ....	32
Subchapter 7 Determination of Significance .....	33
§11-200.1-12 Consideration of previous determinations and accepted statements. ....	33
§11-200.1-13 Significance criteria. ....	33
§11-200.1-14 Determination of level of environmental review. ....	34
Subchapter 8 Exempt Actions, List, and Notice Requirements .....	35
§11-200.1-15 General types of actions eligible for exemption. ....	35
§11-200.1-16 Exemption lists. ....	37
§11-200.1-17 Exemption notices. ....	37
Subchapter 9 Preparation of Environmental Assessments .....	38
§11-200.1-18 Preparation and contents of a draft environmental assessment. ....	38
§11-200.1-19 Notice of determination for draft environmental assessments. ....	39
§11-200.1-20 Public review and response requirements for draft environmental assessments. ....	40
§11-200.1-21 Contents of a final environmental assessment. ....	42
§11-200.1-22 Notice of determination for final environmental assessments. ....	43
Subchapter 10 Preparation of Environmental Impact Statements. ....	44
§11-200.1-23 Consultation prior to filing a draft environmental impact statement. ....	44
§11-200.1-24 Content requirements; draft environmental impact statement. ....	45
§11-200.1-25 Public review requirements for draft environmental impact statements. ....	50
§11-200.1-26 Comment response requirements for draft environmental impact statements. ....	51
§11-200.1-27 Content requirements; final environmental impact statement. ....	52
§11-200.1-28 Acceptability. ....	53
§11-200.1-29 Appeals to the council. ....	55
§11-200.1-30 Supplemental environmental impact statements. ....	55
Subchapter 11 National Environmental Policy Act .....	56
§11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS. ....	56
Subchapter 12 Retroactivity and Severability .....	57
§11-200.1-32 Retroactivity. ....	57
§11-200.1-33 Severability. ....	58

PART 2: Related Session Laws, Statutes, and Rules ..... 60

Act 50, SLH 2000, A Bill for an Act Relating to Environmental Impact Statements .....61

Act 193, SLH 2016, A Bill for an Act Relating to Broadband..... 63

Act 48, SLH 2017, A Bill for an Act Relating to Transportation..... 65

Act 17, SLH 2018, A Bill for an Act Relating to Environmental Protection ..... 67

HRS Chapter 105A, Plant and Non-Domestic Animal Quarantine and Microorganism Import. 68

    §105A-10    Advisory committee on plants and animals. .... 68

HRS Chapter 183B, Hawaiian Fishponds..... 69

    §183B-1    Definitions. .... 69

    §183B-2    Exemption from environmental impact statement law..... 69

    §183B-3    Department assistance..... 70

HRS Chapter 205, Land Use Commission..... 71

    §205-2    Districting and classification of boundaries ..... 71

    §205-4.5    Permissible uses within the agricultural districts.....75

    §205-5    Zoning. .... 83

HRS Chapter 205A, Coastal Zone Management ..... 85

    §205A-41    Definitions. .... 85

HRS Chapter 304A, University of Hawaii System..... 86

    §304A-1551    Environmental center; structure and functions. .... 86

HRS Chapter 334, Mental Health, Mental Illness, Drug Addiction, and Alcoholism..... 87

    §334-2.7    Development or expansion of a forensic facility of the department of health.  
 ..... 87

HRS Chapter 341, Environmental Quality Control ..... 88

    §341-1    Findings and purpose. .... 88

    §341-2    Definitions. .... 88

    §341-3    Office of environmental quality control; environmental center; environmental  
 council..... 89

    §341-4    Powers and duties of the director. .... 90

    §341-5    REPEALED. .... 90

    §341-6    Functions of the environmental council.....91

HRS Chapter 344, State Environmental Policy..... 92

    §344-1    Purpose. .... 92

    §344-2    Definitions. .... 92

    §344-3    Environmental policy..... 93

    §344-4    Guidelines. .... 93

HRS Chapter 353, Corrections ..... 97

    §353-16.35    Development or expansion of in-state correctional facilities..... 97

HRS Chapter 501, Land Court Registration .....	98
§501-33    Accretion to land.....	98
HRS Chapter 604A, Environmental Courts .....	99
§604A-1    Environmental courts; establishment. ....	99
§604A-2    Jurisdiction.....	99
§604A-3    Rules. ....	100
HRS Chapter 669, Quieting Title.....	101
§669-1    Object of action.....	101
HAR Chapter 11-201, Environmental Council Rules of Practice and Procedure .....	105
Subchapter 1 Purpose.....	106
§11-201-1    Purpose .....	106
Subchapter 2    Definition .....	106
§11-201-2    Definitions .....	106
Subchapter 3 Environmental Council.....	107
§11-201-3    Environmental Council.....	107
§11-201-4    Delegation of Administrative Duties .....	108
Subchapter 4 Public Records .....	109
§11-201-5    Public Records .....	109
Subchapter 5 Proceedings Before Council or Hearing Officer.....	109
§11-201-6    Proceedings Before Council or Hearing Officer.....	109
§11-201-7    Disqualification of Council Member or Hearing Officer .....	110
§11-201-8    Consolidations .....	111
§11-201-9    Filing of Documents.....	111
§11-201-10    Amendment of Documents and Dismissal .....	111
§11-201-11    Retention of Documents .....	112
§11-201-12    Service of Process.....	112
§11-201-13    Council Decision .....	112
§11-201-14    Computation of Time.....	112
§11-201-15    Continuance or Extensions of Time.....	113
Subchapter 6 Rulemaking.....	113
§11-201-16    Initiation of Rulemaking Proceedings .....	113
§11-201-17    Notice of Public Hearing.....	114
§11-201-18    Conduct of Hearing.....	114
§11-201-19    Council Action.....	115
§11-201-20    Emergency Rulemaking.....	115
Subchapter 7 Declaratory Rulings .....	116

§11-201-21	Petitions for Declaratory Rulings .....	116
§11-201-22	Refusal to Issue a Declaratory Order.....	116
§11-201-23	Request for Hearing.....	117
§11-201-24	Applicability of Order .....	117
§11-201-25	Declaratory Ruling on Council's Own Motion.....	117
Subchapter 8 Appeals	.....	117
§11-201-26	Filing of Appeal.....	117
§11-201-27	Filing of Response to Appeal .....	118
§11-201-28	Appeal Hearings; Generally.....	118
§11-201-29	Appeal Hearings; Witnesses .....	120
§11-201-30	Appeal Hearings; Procedures .....	120
Glossary.....	.....	122

## ACRONYMS AND ABBREVIATIONS

EA	environmental assessment
EIS	environmental impact statement
EISPN	environmental impact statement preparation notice
FONSI	finding of no significant impact
HAR	Hawai‘i Administrative Rules
HRS	Hawai‘i Revised Statutes
NEPA	National Environmental Policy Act
OEQC	Office of Environmental Quality Control
SLH	Session Laws of Hawai‘i

## INTRODUCTION

This document brings together in one place the various statutes and administrative rules relating to Hawai‘i’s environmental review process. This is not a guidebook. It is called an “unofficial compilation” because it is formatted differently from the State Legislative Reference Bureau’s official standard. This document presents the statutes and rules in a visual hierarchy based on section, paragraph, and clause.

This “unofficial” format also bolds terms that are defined in Chapters 341, 343, and 343, Hawai‘i Revised Statutes (HRS), and Chapters 11-200.1 and 11-201, Hawai‘i Administrative Rules (HAR). Statutes and rules might have slight variations in definitions of the same word. A glossary of terms defined in Chapter 343, HRS, and Chapter 11-200.1, HAR, is included at the end of this document.

Since the Office of Environmental Quality Control (OEQC) issued the November 2016 unofficial compilation of Hawai‘i’s environmental review laws, the Environmental Council repealed Chapter 11-200, HAR, and adopted Chapter 11-200.1, HAR. This document includes only the new HAR Chapter 11-200.1. To review the 1996 rules for grandfathered actions, refer to the [2016 Unofficial Compilation](#). To review how the rules changed from Chapter 11-200, HAR, to the new rules, Chapter 11-200.1, refer to [Appendix 2 of the Rationale document](#). To view a copy of the officially formatted version of Chapter 11-200.1, HAR, [refer here](#).

This unofficial compilation is organized into two parts, with the main environmental review laws first and related statutes and rules second. Part 1 includes the two primary laws, placed at the beginning of the document for convenience.

Part 2 includes session laws, statutes, and rules that are related to the implementation or administration of the EIS process; e.g., Section 334-2.7, HRS, sets a 60-day comment period on draft EISs for forensic health facilities. Part 2 also includes statutes that are referenced in Chapter 343, HRS; e.g., Section 343-3 directs the OEQC to publish an application for the

registration of land by accretion pursuant to section 501-33 or 669-1(e), HRS, for any land accreted along the ocean. Part 2 does not include statutes that merely make reference to Chapter 343, HRS, without making changes to how Chapter 343, HRS, is implemented or administered.

Part 1: The EIS Statute and Rules

- HRS Chapter 343, Environmental Impact Statements
- HAR Chapter 11-200.1, Environmental Impact Statement Rules

Part 2: Related Session Laws, Statutes, and Rules

- Act 50, SLH 2000, Environmental Impact Statements (Cultural Impacts)
- Act 193, SLH 2016, Broadband
- Act 48, SLH 2017, Transportation
- Act 17, SLH 2018, Environmental Protection (Sea Level Rise)
- HRS Chapter 150A, Plant and Non-Domestic Animal Quarantine and Microorganism Import
  - Section 10, Advisory committee on plants and animals
- HRS Chapter 183B, Hawaiian Fishponds
- HRS Chapter 205, Land Use Commission
  - Section 2, Districting and classification of boundaries
  - Section 4.5, Permissible uses within the agricultural districts
  - Section 5, Zoning
- HRS Chapter 205A, Coastal Zone Management
  - Section 41, Definitions
- HRS Chapter 304A, University of Hawai'i System
  - Section 1551, Environmental center; structure and functions
- HRS Chapter 334, Mental Health, Mental Illness, Drug Addiction, and Alcoholism
  - Section 2.7, Development or expansion of a forensic facility of the department of health
- HRS Chapter 341, Environmental Quality Control
- HRS Chapter 344, State Environmental Policy
- HRS Chapter 353, Corrections
  - Section 16.35, Development or expansion of in-state correctional facilities
- HRS Chapter 501, Land Court Registration
  - Section 33, Accretion of Land
- HRS Chapter 604A, Environmental Courts
- HRS Chapter 669, Quieting Title
  - Section 1, Object of action
- HAR Chapter 11-201, Environmental Council Rules of Practice and Procedure

Other resources are available on the [OEQC website](#) and [SharePoint site](#). Please contact the OEQC at [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov) or 808-586-4185 if you identify any errors, omissions, or recommendations for inclusion in future updates.

## PART 1: THE EIS STATUTE AND RULES

HRS Chapter 343, Environmental Impact Statements .....	1
HAR Chapter 11-200.1, Environmental Impact Statement Rules .....	18

### HRS CHAPTER 343, ENVIRONMENTAL IMPACT STATEMENTS

[http://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-.htm)

#### Sections

§343-1	Findings and purpose. ....	2
§343-2	Definitions. ....	3
§343-3	Public records and notice.....	5
§343-4	REPEALED. ....	6
§343-5	Applicability and requirements. ....	6
§343-5.5	Exception to applicability of chapter. ....	13
§343-6	Rules. ....	13
§343-6.5	Waiahole water system; exemption. ....	15
§343-7	Limitation of actions. ....	15
§343-8	Severability. ....	17

#### *Note*

Broadband services; exemption from certain permitting requirements. L 2011, c 151; L 2013, c 264, §3; L 2016, c 193, §§1, 2.

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2022, or until completion. L 2012, c 218; L 2017, c 48.

#### *Cross References*

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

#### *Law Journals and Reviews*

Ke Ala Pono--The Path of Justice: The Moon Court's Native Hawaiian Rights Decisions. 33 UH L. Rev. 447 (2011).

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).



*Case Notes*

Environmental impact statement addressed all statutory requirements of chapter, was compiled in good faith, and set forth sufficient information to enable decisionmaker to consider fully the environmental factors involved. 81 H. 171, 914 P.2d 1364.

Chapter does not conflict with Hawaiian homes commission act, has only incidental impact on Hawaiian home lands, and is not inconsistent with interests of the beneficiaries; thus, chapter applies to Hawaiian home lands. 87 H. 91, 952 P.2d 379.

HHCA §204 not violated by application of this chapter. 87 H. 91, 952 P.2d 379.

Where lease was executed in contravention of this chapter, power plant developers were not "existing Hawaiian homes commission act lessees"; trial court's decision that the lease was void did not deprive developers of any interest they were entitled to under the law. 106 H. 270, 103 P.3d 939.

Appellants established standing where they showed threatened injuries under the traditional injury-in-fact test and procedural injuries based on a procedural right test; the threatened injury in fact was due to defendant's decision to go forward with harbor improvements and allow the superferry project to operate at Kahului harbor without conducting an environmental assessment; the procedural injury was based on various interests appellants identified that were threatened due to the violation of their procedural rights under this chapter. 115 H. 299, 167 P.3d 292.

Where the record showed that the department of transportation did not consider whether its facilitation of the Hawaii superferry project would probably have minimal or no significant impacts, both primary and secondary, on the environment, its determination that the improvements to Kahului harbor were exempt from the requirements of this chapter was erroneous as a matter of law; the exemption thus being invalid, the environmental assessment of §343-5 was applicable. 115 H. 299, 167 P.3d 292.

Where nothing in §607-25 indicated that §607-25 should provide the exclusive means for awarding attorney's fees and costs against a party for a violation of this chapter, §607-25 was not the exclusive means for awarding attorney's fees and costs for violations of this chapter. 120 H. 181, 202 P.3d 1226.

There is nothing in this chapter to indicate that an archeological inventory survey is a "necessary study" for the completion of an environmental impact statement. 128 H. 53, 283 P.3d 60 (2012).

Where, based on an environmental assessment, the University of Hawaii determined that the implementation of its management plan for the Haleakala High Altitude Observatory Site would not have a significant effect on the environment and did not require the preparation of an environmental impact statement, the circuit court did not err by: (1) concluding the management plan's environmental assessment complied with this chapter and that an environmental impact statement was not required as a matter of law; and (2) granting the University of Hawaii's protective order barring discovery requests. 134 H. 86 (App.), 332 P.3d 688 (2014).

**§343-1 Findings and purpose.**

The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain **actions**. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and

public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.

[L 1979, c 197, §1(1); am L 1983, c 140, §4]

*Case Notes*

Cited: 134 H. 86 (App.), 332 P.3d 688 (2014).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0001.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0001.htm)

§343-2 Definitions.

As used in this chapter unless the context otherwise requires:

"**Acceptance**" means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an **environmental impact statement**, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the **statement**.

"**Action**" means any program or project to be initiated by any agency or **applicant**.

"**Agency**" means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

"**Applicant**" means any **person** who, pursuant to statute, ordinance, or rule, officially requests **approval** for a proposed **action**.

"**Approval**" means a **discretionary consent** required from an **agency** prior to actual implementation of an **action**.

"**Council**" means the environmental **council**.

"**Discretionary consent**" means a consent, sanction, or recommendation from an **agency** for which judgment and free will may be exercised by the issuing **agency**, as distinguished from a ministerial consent.

"**Environmental assessment**" means a written evaluation to determine whether an **action** may have a significant effect.

"**Environmental impact statement**" or "**statement**" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed **action**, effects of a proposed **action** on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed **action**, measures proposed to minimize adverse effects, and alternatives to the **action** and their environmental effects.

The initial **statement** filed for public review shall be referred to as the draft **statement** and shall be distinguished from the final **statement** which is the

document that has incorporated the public's comments and the responses to those comments. The final **statement** is the document that shall be evaluated for acceptability by the respective accepting authority.

**"Finding of no significant impact"** means a determination based on an **environmental assessment** that the subject **action** will not have a significant effect and, therefore, will not require the preparation of an **environmental impact statement**.

**"Helicopter facility"** means any area of land or water which is used, or intended for use for the landing or takeoff of helicopters; and any appurtenant areas which are used, or intended for use for helicopter related activities or rights-of-way.

**"Office"** means the **office** of environmental quality control.

**"Person"** includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an **agency**.

**"Power-generating facility"** means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

**"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.

**"Wastewater treatment unit"** means any plant or facility used in the treatment of wastewater.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(2); am L 1983, c 140, §5; am L 1986, c 186, §1; am L 1987, c 187, §1 and c 325, §2; am L 1996, c 61, §1; am L 2000, c 50, §2; am L 2004, c 55, §2; am L 2005, c 130, §2; am L 2008, c 207, §3; am L 2016, c 27, §4]

*Attorney General Opinions*

"Action" includes a subdivision proposal. Att. Gen. Op. 75-14.

"Action" includes issuance of building permits. Att. Gen. Op. 75-15.

*Law Journals and Reviews*

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawaii. 35 UH L. Rev. 249 (2013).

*Case Notes*

Sufficiency of an environmental impact statement. 59 H. 156, 577 P.2d 1116.

Sufficiency of an environmental impact statement is a question of law. 81 H. 171, 914 P.2d 1364.

The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of §343-5(c) is whether the proposed action will "likely" have a significant effect on the environment; as defined in this section, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

Where record in the case showed no substantive change in the project, nor any evidence that the subdivision application proposed "any use within a shoreline area as defined in §205A-41", as required in §343-5(a)(3), thereby making the subdivision application an "action" under this section that required a supplemental environmental impact statement, once the environmental impact statement had been accepted, no other statement for the proposed project was required under §343-5(g). 120 H. 457 (App.), 209 P.3d 1271.

Cited: 134 H. 86 (App.), 332 P.3d 688 (2014).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0002.htm)

### §343-3 Public records and notice.

- (a) All **statements, environmental assessments**, and other documents prepared under this chapter shall be made available for inspection by the public during established **office** hours.
- (b) The **office** shall inform the public of notices filed by agencies of the availability of **environmental assessments** for review and comments, of determinations that **statements** are required or not required, of the availability of **statements** for review and comments, and of the **acceptance** or nonacceptance of **statements**.
- (c) The **office** shall inform the public of:
  - (1) A public comment process or public hearing if a federal agency provides for the public comment process or public hearing to process a habitat conservation plan, safe harbor agreement, or incidental take license pursuant to the federal Endangered Species Act;
  - (2) A proposed habitat conservation plan or proposed safe harbor agreement, and availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment;
  - (3) A proposed incidental take license as part of a habitat conservation plan or safe harbor agreement; and
  - (4) An application for the registration of land by accretion pursuant to section 501-33 or 669-1(e) for any land accreted along the ocean.
- (d) The **office** shall inform the public by the publication of a periodic bulletin to be available to **persons** requesting this information.

The bulletin shall be available through the **office** and public libraries.

[L 1974, c 246, pt of §1; ren L 1979, c 197, §1(3); am L 1983, c 140, §6; am L 1992, c 241, §1; am L 1997, c 380, §8; am L 1998, c 237, §7; am L 2003, c 73, §3]

*Case Notes*

Where there was no evidence that the city department of planning and permitting filed a notice with the office of environmental quality control pursuant to HAR §11-200-11.1 of its determination that a supplemental environmental impact statement was not required, there was no date from which to measure the thirty day limitation prescribed by §343-7(b) and §343-7(b) was thus inapplicable; in addition, given the plain and unambiguous language of §343-7 and this section, coupled with the related administrative rules, actual knowledge cannot be substituted for the public notice requirement. 123 H. 150, 231 P.3d 423 (2010).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0003.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0003.htm)

§343-4 REPEALED.

L 1983, c 140, §7.

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0004.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0004.htm)

§343-5 Applicability and requirements.

- (a) Except as otherwise provided, an **environmental assessment** shall be required for **actions** that:
- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the **agency** has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the **agency** shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an **environmental assessment** for proposed uses under section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to section 205-5(b);
  - (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
  - (3) Propose any use within a shoreline area as defined in section 205A-41;
  - (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
  - (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except **actions** proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
  - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
  - (B) A shoreline area as defined in section 205A-41; or
  - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the **helicopter facility** and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
  - (A) **Wastewater treatment unit**, except an individual wastewater system or a **wastewater treatment unit** serving fewer than fifty single-family dwellings or the equivalent;
  - (B) Waste-to-energy facility;
  - (C) Landfill;
  - (D) Oil refinery; or
  - (E) **Power-generating facility**.
- (b) Whenever an **agency** proposes an **action** in subsection (a), other than feasibility or planning studies for possible future programs or projects that the **agency** has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of **action** declared exempt under section 343-6, the **agency** shall prepare an **environmental assessment** for the **action** at the earliest practicable time to determine whether an **environmental impact statement** shall be required; provided that if the **agency** determines, through its judgment and experience, that an **environmental impact statement** is likely to be required, the **agency** may choose not to prepare an **environmental**

**assessment** and instead shall prepare an **environmental impact statement** that begins with the preparation of an **environmental impact statement** preparation notice as provided by rules.

- (c) For **environmental assessments** for which a **finding of no significant impact** is anticipated:
- (1) A draft **environmental assessment** shall be made available for public review and comment for a period of thirty days;
  - (2) The **office** shall inform the public of the availability of the draft **environmental assessment** for public review and comment pursuant to section 343-3;
  - (3) The **agency** shall respond in writing to comments received during the review and prepare a final **environmental assessment** to determine whether an **environmental impact statement** shall be required;
  - (4) A **statement** shall be required if the **agency** finds that the proposed **action** may have a **significant effect** on the environment; and
  - (5) The **agency** shall file notice of the determination with the **office**. When a conflict of interest may exist because the **proposing agency** and the **agency** making the determination are the same, the **office** may review the **agency's** determination, consult the **agency**, and advise the **agency** of potential conflicts, to comply with this section. The **office** shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final **statements**, if required, shall be prepared by the **agency** and submitted to the **office**. The draft **statement** shall be made available for public review and comment through the **office** for a period of forty-five days. The **office** shall inform the public of the availability of the draft **statement** for public review and comment pursuant to section 343-3. The **agency** shall respond in writing to comments received during the review and prepare a final **statement**.

The **office**, when requested by the **agency**, may make a recommendation as to the acceptability of the final **statement**.

- (d) The final authority to accept a final **statement** shall rest with:
- (1) The governor, or the governor's authorized representative, whenever an **action** proposes the use of state lands or the use of state funds, or whenever a state **agency** proposes an **action** within the categories in subsection (a); or
  - (2) The mayor, or the mayor's authorized representative, of the respective county whenever an **action** proposes only the use of county lands or county funds.

**Acceptance** of a required final **statement** shall be a condition precedent to implementation of the proposed **action**. Upon **acceptance**

or nonacceptance of the final **statement**, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the **office**. The **office**, in turn, shall publish the determination of **acceptance** or nonacceptance pursuant to section 343-3.

- (e) Whenever an **applicant** proposes an **action** specified by subsection (a) that requires **approval** of an agency and that is not a specific type of **action** declared exempt under section 343-6, the **agency** initially receiving and agreeing to process the request for **approval** shall require the **applicant** to prepare an **environmental assessment** of the proposed **action** at the earliest practicable time to determine whether an **environmental impact statement** shall be required; provided that if the **agency** determines, through its judgment and experience, that an **environmental impact statement** is likely to be required, the **agency** may authorize the **applicant** to choose not to prepare an **environmental assessment** and instead prepare an **environmental impact statement** that begins with the preparation of an **environmental impact statement** preparation notice as provided by rules. The final approving **agency** for the request for **approval** is not required to be the accepting authority.

For **environmental assessments** for which a **finding of no significant impact** is anticipated:

- (1) A draft **environmental assessment** shall be made available for public review and comment for a period of thirty days;
- (2) The **office** shall inform the public of the availability of the draft **environmental assessment** for public review and comment pursuant to section 343-3; and
- (3) The **applicant** shall respond in writing to comments received during the review and the **applicant** shall prepare a final **environmental assessment** to determine whether an **environmental impact statement** shall be required. A **statement** shall be required if the **agency** finds that the proposed **action** may have a **significant effect** on the environment. The **agency** shall file notice of the **agency's** determination with the **office**, which, in turn, shall publish the **agency's** determination for the public's information pursuant to section 343-3.

The draft and final **statements**, if required, shall be prepared by the **applicant**, who shall file these **statements** with the **office**.

The draft **statement** shall be made available for public review and comment through the **office** for a period of forty-five days. The **office** shall inform the public of the availability of the draft **statement** for public review and comment pursuant to section 343-3.

The **applicant** shall respond in writing to comments received during the review and prepare a final **statement**. The **office**, when requested by



the **applicant** or **agency**, may make a recommendation as to the acceptability of the final **statement**.

The authority to accept a final **statement** shall rest with the **agency** initially receiving and agreeing to process the request for **approval**. The final decision-making body or approving **agency** for the request for **approval** is not required to be the accepting authority. The planning department for the county in which the proposed **action** will occur shall be a permissible accepting authority for the final **statement**.

**Acceptance** of a required final **statement** shall be a condition precedent to **approval** of the request and commencement of the proposed **action**. Upon **acceptance** or nonacceptance of the final **statement**, the **agency** shall file notice of the determination with the **office**. The **office**, in turn, shall publish the determination of **acceptance** or nonacceptance of the final **statement** pursuant to section 343-3.

The **agency** receiving the request, within thirty days of receipt of the final **statement**, shall notify the **applicant** and the **office** of the **acceptance** or nonacceptance of the final **statement**. The final **statement** shall be deemed to be accepted if the **agency** fails to accept or not accept the final **statement** within thirty days after receipt of the final **statement**; provided that the thirty-day period may be extended at the request of the **applicant** for a period not to exceed fifteen days.

In any **acceptance** or nonacceptance, the **agency** shall provide the **applicant** with the specific findings and reasons for its determination. An **applicant**, within sixty days after nonacceptance of a final **statement** by an **agency**, may appeal the nonacceptance to the environmental **council**, which, within thirty days of receipt of the appeal, shall notify the **applicant** of the **council's** determination. In any affirmation or reversal of an appealed nonacceptance, the **council** shall provide the **applicant** and **agency** with specific findings and reasons for its determination. The **agency** shall abide by the **council's** decision.

- (f) Whenever an **applicant** requests **approval** for a proposed **action** and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of determining whether an **environmental assessment** is required, the **office**, after consultation with and assistance from the affected state or county agencies, shall determine which **agency** has the responsibility for determining whether an **environmental assessment** by the **applicant** is required, except in situations involving secondary **actions** under section 343-5.5; provided that in no case shall the **office** be considered the approving **agency**.
- (g) In preparing an **environmental assessment**, an **agency** may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a **statement** is required and previously accepted **statements**. The **council**, by rule, shall establish criteria and procedures for the use of previous determinations and **statements**.

- (h) Whenever an **action** is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the **office** and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint **environmental impact statements** with concurrent public review and processing at both levels of government. Where federal law has **environmental impact statement** requirements in addition to but not in conflict with this chapter, the **office** and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.
- (i) A **statement** that is accepted with respect to a particular **action** shall satisfy the requirements of this chapter, and no other **statement** for the proposed **action** shall be required.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(5), (6); am L 1980, c 22, §1; am L 1983, c 140, §8; gen ch 1985; am L 1987, c 187, §2, c 195, §1, c 283, §23, and c 325, §1; am L 1992, c 241, §2; am L 1996, c 61, §2; am L 2004, c 55, §3; am L 2005, c 130, §3; am L 2006, c 250, §4; am L 2008, c 110, §2 and c 207, §5; am L 2009, c 11, §4; am L 2012, c 172, §2 and c 312, §2; am L 2016, c 27, §5]

*Attorney General Opinions*

Amendments to county development plans; when environmental assessments required. Att. Gen. Op. 85-30.

Applicable to housing developed under chapter 359G. Att. Gen. Op. 86-13.

*Law Journals and Reviews*

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawaii. 35 UH L. Rev. 249 (2013).

*Case Notes*

Law contemplates consideration of secondary and nonphysical aspects of proposal, including socio-economic consequences. 63 H. 453, 629 P.2d 1134.

Requirements not applicable to project pending when law took effect unless agency requested statement. 63 H. 453, 629 P.2d 1134.

Construction and use of home and underground utilities near Paiko Lagoon wildlife sanctuary. 64 H. 27, 636 P.2d 158.

Environmental assessment required before land use commission can reclassify conservation land to other uses. 65 H. 133, 648 P.2d 702.

Participation by plaintiffs at contested case hearing did not excuse preparation of environmental assessment. 86 H. 66, 947 P.2d 378.

For Hawaiian home lands, the department of Hawaiian home lands is the accepting authority for applicant proposals under subsection (c); because the governor is not involved, there is no conflict with Hawaiian homes commission act. 87 H. 91, 952 P.2d 379.

"State lands" in subsection (a)(1) includes Hawaiian home lands. 87 H. 91, 952 P.2d 379.

In order to achieve the salutary objectives of the Hawaii environmental policy act, and because developer's proposed underpasses had been, from the start, an integral part of the project, developer's proposed construction of two underpasses under highway constituted "use of state lands" within the meaning of subsection (a)(1). 91 H. 94, 979 P.2d 1120.

The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of subsection (c) is whether the proposed action will "likely" have a significant effect on the environment; as defined in §343-2, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

Where department of Hawaiian home lands lease was executed in contravention of subsection (c) inasmuch as the condition precedent--acceptance of a required final environmental impact statement--was not satisfied, the lease was void. 106 H. 270, 103 P.3d 939.

Where all three elements under subsection (c) were present: (1) an applicant proposed an action specified by subsection (a), (2) the action required the approval of an agency, and (3) the action was not exempt under §343-6, the land use commission, as the agency that received the request for approval of the boundary amendment petition, was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098.

Where the record showed that the department of transportation did not consider whether its facilitation of the Hawaii superferry project would probably have minimal or no significant impacts, both primary and secondary, on the environment, its determination that the improvements to Kahului harbor were exempt from the requirements of this chapter was erroneous as a matter of law; the exemption thus being invalid, the environmental assessment of this section was applicable. 115 H. 299, 167 P.3d 292.

Trial court did not err in determining that there was no "use" of state or county land under subsection (a)(1) where developer's detention basins and drainage line was merely connected and routed through the existing street drainage system and developer's sewage lines were connected to the county's existing sewage lines as neither line would require tunneling or construction beneath state or county lands. 119 H. 90, 194 P.3d 531.

While chapter 150A and the board's microorganism import rules may have vested the board with exclusive authority to approve marine biotechnology firm's proposal to import and grow genetically engineered algae at the State's research and technology park, as the demonstration project constituted an action that proposed the use of state land, this section plainly and unambiguously required the preparation of an environmental assessment before the board could approve firm's application. 118 H. 247 (App.), 188 P.3d 761.

Where record in the case showed no substantive change in the project, nor any evidence that the subdivision application proposed "any use within a shoreline area as defined in §205A-41", as required in subsection (a)(3), thereby making the subdivision application an "action" under §343-2 that required a supplemental environmental impact statement, once the environmental impact statement had been accepted, no other statement for the proposed project was required under subsection (g). 120 H. 457 (App.), 209 P.3d 1271.

Where there were genuine issues of material fact regarding whether the church building project site was included in the National and Hawaii (historic) registers, thus triggering the requirement for an environmental assessment under this section, the circuit court erred in granting summary judgment by

finding that only the church structure itself, and not the church building project site, was included in the National and Hawaii registers. 128 H. 455 (App.), 290 P.3d 525 (2012).

Cited: 134 H. 86 (App.), 332 P.3d 688 (2014).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0005.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0005.htm)

§343-5.5 Exception to applicability of chapter.

(a) Notwithstanding any other law to the contrary, for any **primary action** that requires a permit or **approval** that is not subject to a **discretionary consent** and that involves a **secondary action** that is ancillary and limited to the installation, improvement, renovation, construction, or development of **infrastructure** within an existing public right-of-way or highway, that **secondary action** shall be exempt from this chapter; provided that the **applicant** for the **primary action** shall submit documentation from the appropriate **agency** confirming that no further discretionary **approvals** are required.

(b) As used in this section:

"**Discretionary consent**" means:

- (1) An **action** as defined in section 343-2; or
- (2) An **approval** from a decision-making authority in an **agency**, which **approval** is subject to a public hearing.

"**Infrastructure**" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"**Primary action**" means an **action** outside of the highway or public right-of-way that is on private property.

"**Secondary action**" means an **action** involving **infrastructure** within the highway or public right-of-way.

[L 2012, c 312, §1]

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0005\\_0005.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0005_0005.htm)

§343-6 Rules.

(a) After consultation with the affected agencies, the **council** shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules that shall:

- (1) Prescribe the procedures whereby a group of proposed **actions** may be treated by a single **environmental assessment** or **statement**;

- (2) Establish procedures whereby specific types of **actions**, because they will probably have minimal or no **significant effects** on the environment, are declared exempt from the preparation of an **environmental assessment**;
  - (3) Prescribe procedures for the preparation of an **environmental assessment**;
  - (4) Prescribe the contents of an **environmental assessment**;
  - (5) Prescribe procedures for informing the public of determinations that a **statement** is either required or not required, for informing the public of the availability of draft **environmental impact statements** for review and comments, and for informing the public of the **acceptance** or nonacceptance of the final environmental **statement**;
  - (6) Prescribe the contents of an **environmental impact statement**;
  - (7) Prescribe procedures for the submission, distribution, review, **acceptance** or nonacceptance, and withdrawal of an **environmental impact statement**;
  - (8) Establish criteria to determine whether an **environmental impact statement** is acceptable or not; and
  - (9) Prescribe procedures to appeal the nonacceptance of an **environmental impact statement** to the environmental **council**.
- (b) At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of any rule.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(7); am L 1983, c 140, §9; am L 1986, c 186, §2; am L 1987, c 187, §3; am L 2008, c 110, §3]

*Law Journals and Reviews*

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawaii. 35 UH L. Rev. 249 (2013).

*Case Notes*

Project requiring completely new drainage system serving over 300 residences was qualitatively incompatible with both letter and intent of administrative rules implementing subsection (a)(7) which intended to exempt only very minor projects from requirements of this chapter. 86 H. 66, 947 P.2d 378.

Where all three elements under §343-5(c) were present: (1) an applicant proposed an action specified by §343-5(a), (2) the action required the approval of an agency, and (3) the action was not exempt under this section, the land use commission, as the agency that received the request for approval of the boundary amendment petition, was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098.

The environmental council is expressly granted the power to promulgate rules regarding environmental impact statements, and it clearly contemplates the possibility of changes to an original project that may dictate the need for a supplemental environmental impact statement (SEIS); the rules promulgated to

address SEISs, including HAR §§11-200-26 and 11-200-27, were within the implied powers reasonably necessary to carry out the powers expressly granted; as the SEIS process was consistent with the Hawaii environmental protection act, the council did not exceed its authority in promulgating rules to guide the SEIS process, including HAR §§11-200-26 and 11-200-27. 123 H. 150, 231 P.3d 423 (2010).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0006.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0006.htm)

§343-6.5 Waiahole water system; exemption.

The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343.

[L 1998, c 111, §4]

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0006\\_0005.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0006_0005.htm)

§343-7 Limitation of actions.

- (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within one hundred twenty days of the **agency's** decision to carry out or approve the **action**, or, if a proposed **action** is undertaken without a formal determination by the **agency** that a **statement** is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed **action** is started. The **council** or **office**, any **agency** responsible for **approval** of the **action**, or the **applicant** shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by environmental court action, may be adjudged aggrieved.
- (b) Any judicial proceeding, the subject of which is the determination that a **statement** is required for a proposed **action**, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a **statement** is not required for a proposed **action**, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The **council** or the **applicant** shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by environmental court action, may be adjudged aggrieved.
- (c) Any judicial proceeding, the subject of which is the **acceptance** of an **environmental impact statement** required under section 343-5, shall be initiated within sixty days after the public has been informed pursuant to section 343-3 of the **acceptance** of such **statement**. The **council** shall be adjudged an aggrieved party for the purpose of bringing judicial action under this subsection. Affected agencies and **persons** who provided written comment to such **statement** during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that the contestable issues shall be limited to issues identified and discussed in the written comment.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(8); am L 1983, c 140, §10;  
am L 1992, c 241, §3; am L 2014, c 218, §8]

*Law Journals and Reviews*

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

*Case Notes*

Plaintiff's claims that Hawaii environmental policy act was violated were barred; plaintiff did not submit comment and filed suit more than sixty days after office of environmental quality control informed the public that the state final environmental impact statement had been accepted. 307 F. Supp. 2d 1149.

Court has no jurisdiction over actions initiated after time limit. 64 H. 126, 637 P.2d 776.

Date of commission's decision to grant SMA permit triggered time period for appeal, not date when commission made express determination that no environmental assessment was required for project; plaintiff's challenge to lack of environmental assessment thus timely. 86 H. 66, 947 P.2d 378.

Where the federal construct of a procedural right was not germane to case because this section, the statute at issue, establishes who and under what circumstances the lack of an environmental assessment, may be challenged, and federal cases recognizing this standard were inapposite because they rested on non-analogous statutes, petitioner could not be afforded so-called "procedural standing" under subsection (a). 100 H. 242, 59 P.3d 877.

Where Hawaiian homes commission did not accept the proposal for an environmental impact statement, the subject of the judicial proceeding before the trial court was not the "acceptance" of such statement; intervenors were not required to provide written comments pursuant to subsection (c) as subsection (c) did not apply; intervenor's objections, therefore, were subject to judicial review under subsection (b). 106 H. 270, 103 P.3d 939.

Appellants established standing where they showed threatened injuries under the traditional injury-in-fact test and procedural injuries based on a procedural right test; the threatened injury in fact was due to defendant's decision to go forward with harbor improvements and allow the superferry project to operate at Kahului harbor without conducting an environmental assessment; the procedural injury was based on various interests appellants identified that were threatened due to the violation of their procedural rights under this chapter. 115 H. 299, 167 P.3d 292.

Where this section waived the State's sovereign immunity against actions brought to challenge: (1) the lack of an environmental assessment; (2) the determination that an environmental impact statement is or is not required; and (3) the acceptance of an environmental impact statement, sovereign immunity did not prevent the application of the private attorney general doctrine against the State and the circuit court did not err in relying on the doctrine as a basis for its award of attorney's fees against the State and superferry jointly. 120 H. 181, 202 P.3d 1226.

Although the subdivision application was part of the larger action (i.e., the project), the specific "action" for statute of limitations purposes was the date the subdivision application was approved, as opposed to when the project itself was originally approved; thus, where plaintiffs' initial complaint was filed within 120 days of the department of planning and permitting's approval of the subdivision application, plaintiffs' claims were not barred by this section. 123 H. 150, 231 P.3d 423 (2010).

Where there was no evidence that the city department of planning and permitting filed a notice with the office of environmental quality control pursuant to HAR §11-200-11.1 of its determination that a supplemental environmental impact statement was not required, there was no date from which to measure the thirty day limitation prescribed by subsection (b) and subsection (b) was thus inapplicable; in addition, given the plain and unambiguous language of this section and §343-3, coupled with the

related administrative rules, actual knowledge cannot be substituted for the public notice requirement. 123 H. 150, 231 P.3d 423 (2010).

Cited: 134 H. 86 (App.), 332 P.3d 688 (2014).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0007.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0007.htm)

**§343-8 Severability.**

If any provision of this chapter or the application thereof to any **person** or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.

[L 1974, c 246, pt of §1; ren L 1979, c 197, §1(9)]

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0343/HRS\\_0343-0008.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0008.htm)



## HAR CHAPTER 11-200.1, ENVIRONMENTAL IMPACT STATEMENT RULES

Historical note: This chapter is based substantially upon chapter 11-200.

Subchapter 1 Purpose.....	19
§11-200.1-1 Purpose.....	19
Subchapter 2 Definitions .....	20
§11-200.1-2 Definitions.....	20
Subchapter 3 Computation of Time.....	24
§11-200.1-3 Computation of time.....	24
Subchapter 4 Filing and Publication in the Periodic Bulletin .....	24
§11-200.1-4 Periodic bulletin.....	24
§11-200.1-5 Filing requirements for publication and withdrawal.....	25
§11-200.1-6 Republication of notices, documents, and determinations.....	28
Subchapter 5 Responsibilities.....	28
§11-200.1-7 Identification of approving agency and accepting authority.....	28
Subchapter 6 Applicability .....	30
§11-200.1-8 Applicability of chapter 343, HRS, to agency actions.....	30
§11-200.1-9 Applicability of chapter 343, HRS, to applicant actions.....	30
§11-200.1-10 Multiple or phased actions.....	32
§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions.....	32
Subchapter 7 Determination of Significance .....	33
§11-200.1-12 Consideration of previous determinations and accepted statements.....	33
§11-200.1-13 Significance criteria.....	33
§11-200.1-14 Determination of level of environmental review.....	34
Subchapter 8 Exempt Actions, List, and Notice Requirements .....	35
§11-200.1-15 General types of actions eligible for exemption.....	35
§11-200.1-16 Exemption lists.....	37
§11-200.1-17 Exemption notices.....	37
Subchapter 9 Preparation of Environmental Assessments .....	38
§11-200.1-18 Preparation and contents of a draft environmental assessment.....	38
§11-200.1-19 Notice of determination for draft environmental assessments.....	39
§11-200.1-20 Public review and response requirements for draft environmental assessments.....	40
§11-200.1-21 Contents of a final environmental assessment.....	42
§11-200.1-22 Notice of determination for final environmental assessments.....	43

Subchapter 10 Preparation of Environmental Impact Statements.....	44
§11-200.1-23 Consultation prior to filing a draft environmental impact statement.....	44
§11-200.1-24 Content requirements; draft environmental impact statement. ....	45
§11-200.1-25 Public review requirements for draft environmental impact statements. ....	50
§11-200.1-26 Comment response requirements for draft environmental impact statements. .....	51
§11-200.1-27 Content requirements; final environmental impact statement.....	52
§11-200.1-28 Acceptability. ....	53
§11-200.1-29 Appeals to the council.....	55
§11-200.1-30 Supplemental environmental impact statements.....	55
Subchapter 11 National Environmental Policy Act.....	56
§11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS. .....	56
Subchapter 12 Retroactivity and Severability.....	57
§11-200.1-32 Retroactivity.....	57
§11-200.1-33 Severability. ....	58

[Eff 12/6/85; am and comp 8/31/96; am 12/17/2007; R 8/9/19]

## Subchapter 1 Purpose

### §11-200.1-1 Purpose.

- (a) Chapter 343, Hawaii Revised Statutes (HRS), establishes a system of environmental review at the state and county levels that shall ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations. The purpose of this chapter is to provide **agencies** and **persons** with procedures, specifications regarding the contents of **exemption notices**, **environmental assessments (EAs)**, and **environmental impact statements (EISs)**, and criteria and definitions of statewide application.
- (b) **Agencies** and **applicants** shall ensure that **exemption notices**, **EAs**, and **EISs** are prepared at the earliest practicable time. This shall assure an early, open forum for discussion of adverse **effects** and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed **action** prior to decision-making.
- (c) **Exemption notices**, **EAs**, and **EISs** are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed **action**. In preparing any **exemption notice**, **EA**, or **EIS**, proposing **agencies** and **applicants** are to make every effort to:

- (1) Convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form or length of the document;
- (2) Concentrate on important issues and to ensure that the document remains essentially self-contained, capable of being understood by the reader without the need for undue cross-reference; and
- (3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of **agencies** and the public in the environmental review process.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

## Subchapter 2 Definitions

### §11-200.1-2 Definitions.

As used in this chapter:

"**Acceptance**" means a formal determination that the document required to be filed pursuant to chapter 343, HRS, fulfills the requirements of an **EIS**, as prescribed by section 11-200.1-28. **Acceptance** does not mean that the **action** is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter.

"**Accepting authority**" means, in the case of **agency actions**, the respective governor or mayor, or their authorized representative, and in the case of **applicant actions**, the **agency** that initially received and agreed to process the request for an **approval**, that makes the determination that the **EIS** fulfills the requirements for **acceptance**.

"**Action**" means any **program** or **project** to be initiated by an **agency** or **applicant**.

"**Addendum**" means an attachment to a **draft EA** or **draft EIS**, prepared at the discretion of the **proposing agency**, **applicant**, **accepting authority**, or **approving agency**, and distinct from a **supplemental EIS**, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the **draft EA** or the **draft EIS** filed with the **office**.

"**Agency**" means any department, office, board, or commission of the state or county government that is part of the executive branch of that government.

"**Applicant**" means any **person** that, pursuant to statute, ordinance, or rule, officially requests **approval** from an **agency** for a proposed **action**.

"**Approval**" means a **discretionary consent** required from an **agency** prior to implementation of an **action**.

"**Approving agency**" means an **agency** that issues an **approval** prior to implementation of an **applicant action**.

"**Council**" means the environmental **council**.

"**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 the other **actions**. **Cumulative impacts** can result from individually minor but collectively significant **actions** taking place over a period of time.

"**Discretionary consent**" means a consent, sanction, or recommendation from an **agency** for which judgment and free will may be exercised by the issuing **agency**, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an **agency** based upon a given set of facts, as prescribed by law without the use of judgment or discretion.

"**Draft environmental assessment**" means the **EA** submitted by a **proposing agency** or an **approving agency** for public review and comment when that **agency** anticipates a **finding of no significant impact (FONSI)**.

"**Effects**" or "**impacts**" as used in this chapter are synonymous. **Effects** may include ecological **effects** (such as the **effects** on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic **effects**, historic **effects**, cultural **effects**, economic **effects**, social **effects**, or health **effects**, whether **primary**, **secondary**, or **cumulative**, whether immediate or delayed. **Effects** may also include those **effects** resulting from **actions** that may have both beneficial and detrimental **effects**, even if on balance the **agency** believes that the **effect** will be beneficial.

"**EIS preparation notice**", "**EISPN**", or "**preparation notice**" means a determination that an **action** may have a **significant effect** on the **environment** and, therefore, will require the preparation of an **EIS**, based on either an **EA** or an **agency's** judgment and experience that the proposed **action** may have a **significant effect** on the **environment**.

"**EIS public scoping meeting**" means a meeting in which **agencies**, citizen groups, and the general public assist the **proposing agency** or **applicant** in determining the range of **actions**, alternatives, **impacts**, and proposed mitigation measures to be considered in the **draft EIS** and the significant issues to be analyzed in depth in the **draft EIS**.

"**Emergency action**" means an **action** to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding the immediate **action**.

"**Environment**" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed **action**, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

"**Environmental assessment**" or "**EA**" means a written evaluation that serves to provide sufficient evidence and analysis to determine whether an **action** may have a **significant effect**.

"**Environmental impact statement**", "**statement**", or "**EIS**" means an informational document prepared in compliance with chapter 343, HRS. The initial **EIS** filed for public review shall be referred to as the **draft EIS** and shall be distinguished from the **final EIS**, which is the document that has incorporated the public's comments and the responses to those comments. The **final EIS** is the document that shall be evaluated for acceptability by the **accepting authority**.

"**Exemption list**" means a list prepared by an **agency** pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the **agency** that by their nature do not have the potential to individually or cumulatively adversely affect the **environment** more than negligibly and that the **agency** considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of **actions** the **agency** finds fit into the general types of **action** enumerated in section 11-200.1-15.

"**Exemption notice**" means a notice produced in accordance with subchapter 8 for an **action** that a **proposing agency** or **approving agency** on behalf of an **applicant** determines to be exempt from preparation of an **EA**.

"**Final environmental assessment**" means either the **EA** submitted by a **proposing agency** or an **approving agency** following the public review and comment period for the **draft EA** and in support of either a **FONSI** or an **EISPN**.

"**Finding of no significant impact**" or "**FONSI**" means a determination by an **agency** based on an **EA** that an **action** not otherwise exempt will not have a **significant effect** on the **environment** and therefore does not require the preparation of an **EIS**.

"**Impacts**" means the same as "**effects**".

"**Issue date**" means the date imprinted on the **periodic bulletin** required by section 343-3, HRS.

"**National Environmental Policy Act**" or "**NEPA**" means the **National Environmental Policy Act** of 1969, Public Law 91-190, 42 U.S.C. sections 4321-4347, as amended.

"**Office**" means the **office of environmental quality control**.

"**Periodic bulletin**" or "**bulletin**" means the document required by section 343-3, HRS, and published by the **office**.

"**Person**" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an **agency**.

"**Primary impact**", "**primary effect**", "**direct impact**", or "**direct effect**" means **effects** that are caused by the **action** and occur at the same time and place.

"**Program**" means a series of one or<sup>1</sup> more **projects** to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A **program** may include: a number of separate **projects** in a given geographic area which, if considered singly, may have minor **impacts**, but if considered together, may have **significant impacts**; separate **projects** having generic or common **impacts**; an entire plan having wide application or restricting the range of future alternative policies or **actions**, including new significant changes to existing land use plans, development plans, zoning regulations, or **agency** comprehensive resource management plans; implementation of multiple **projects** over a long time frame; or implementation of a single **project** over a large geographic area.

"**Project**" means a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential **impact** to the **environment**.

"**Proposing agency**" means any state or county **agency** that proposes an **action** under chapter 343, HRS.

"**Secondary impact**", "**secondary effect**", "**indirect impact**", or "**indirect effect**" means an **effect** that is caused by the **action** and is later in time or farther removed in distance, but is still reasonably foreseeable. An **indirect effect** may include a growth-inducing **effect** and other **effects** related to induced changes in the pattern of land use, population density or growth rate, and related **effects** on air, water, and other natural systems, including ecosystems.

"**Significant effect**" or "**significant impact**" 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 and guidelines as established by law, adversely affect the economic welfare, social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200.1-13.

"**Supplemental EIS**" means an updated **EIS** prepared for an **action** for which an **EIS** was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.

"**Trigger**" means any use or activity listed in section 343-5(a), HRS, requiring environmental review.

Unless defined in this section, elsewhere within this chapter, or in chapter 343, HRS, a **proposing agency** or **approving agency** may use its administrative rules or statutes that they implement to interpret undefined terms.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

---

<sup>1</sup> At the Environmental Council's October 1, 2019 meeting, the Council approved a motion that the language should be understood to read as "...a series of one or more projects...".

### Subchapter 3 Computation of Time

#### §11-200.1-3 Computation of time.

The time in which any act prescribed or allowed by this chapter, order of the **council**, or by applicable statute, is computed by excluding the first day and including the last. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which case the last day shall be the next business day.

[Eff 8/9/19] (Auth: HRS §§1-29, 8-1, 343-6) (Imp: HRS §§1-29, 8-1, 343-6)

### Subchapter 4 Filing and Publication in the Periodic Bulletin

#### §11-200.1-4 Periodic bulletin.

- (a) The **periodic bulletin** shall be issued electronically on the eighth and twenty-third days of each month.
- (b) When filed in accordance with section 11-200.1-5, the **office** shall publish the following in the **periodic bulletin** to inform the public of **actions** undergoing chapter 343, HRS, environmental review and the associated public comment periods provided here or elsewhere by statute:
  - (1) Determinations that an existing exemption, **FONSI**, or accepted **EIS** satisfies chapter 343, HRS, for a proposed **action**;
  - (2) **Exemption notices** and lists of **actions** an **agency** has determined to be exempt;
  - (3) **Draft EAs** and appropriate **addendum** documents for public review and thirty-day comment period, including notice of an anticipated **FONSI**;
  - (4) **Final EAs**, including notice of a **FONSI**, or an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting**, and appropriate **addendum** documents;
  - (5) Notice of an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting**, and appropriate **addendum** documents;
  - (6) Evaluations and determinations that **supplemental EISs** are required or not required;
  - (7) **Draft EISs**, draft **supplemental EISs**, and appropriate **addendum** documents for public review and forty-five day comment period;
  - (8) **Final EISs**, final **supplemental EISs**, and appropriate **addendum** documents;
  - (9) Notice of **acceptance** or non-acceptance of **EISs** and **supplemental EISs**;

- (10) Republication of any chapter 343, HRS, notices, documents, or determinations;
  - (11) Notices of withdrawal of any chapter 343, HRS, notices, documents, or determinations; and
  - (12) Other notices required by the rules of the **council**.
- (c) When filed in accordance with this subchapter, the **office** shall publish other notices required by statute or rules, including those not specifically related to chapter 343, HRS.
  - (d) The **office** may, on a space or time available basis, publish other notices not specifically related to chapter 343, HRS.

[Eff 8/9/19] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-5 Filing requirements for publication and withdrawal.

- (a) Anything required to be published in the **bulletin** shall be submitted electronically to the **office** before the close of business five business days prior to the **issue date**, which shall be the **issue date** deadline.
- (b) All submittals to the **office** for publication in the **bulletin** shall be accompanied by a completed informational form that provides whatever information the **office** needs to properly notify the public. The information requested may include the following: the title of the **action**; the islands affected by the proposed **action**; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including for **applicants**, the **approval** requiring chapter 343, HRS, environmental review; whether the proposed **action** is an **agency** or an **applicant action**; a citation to the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses, email addresses, phone numbers and contact **persons** as applicable of the **accepting authority**, the **proposing agency**, the **approving agency**, the **applicant**, and the consultant; and a brief narrative summary of the proposed **action** that provides sufficient detail to convey the **impact** of the proposed **action** to the public.
- (c) The **office** shall not accept untimely submittals or revisions thereto after the **issue date** deadline for which the submittal was originally filed has passed.
- (d) In accordance with the **agency's** rules or, in the case of an **applicant EA** or **EIS**, the **applicant's** judgment, anything filed with the **office** may be withdrawn by the **agency** or **applicant** that filed the submittal with the **office**. To withdraw a submittal, the **agency** or **applicant** shall submit to the **office** a written letter informing the **office** of the withdrawal. The **office** shall publish notice of withdrawals and the rationale in accordance with this subchapter.



- (e) To be published in the **bulletin**, all submittals to the **office** shall meet the filing requirements in subsections (a) to (c) and be prepared in accordance with this chapter and chapter 343, HRS, as appropriate. The following shall meet additional filing requirements:
- (1) When the document is a **draft EA** with an anticipated **FONSI**, the **proposing agency** or **approving agency** shall:
    - (A) File the document and determination with the **office**;
    - (B) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **draft EA** at the nearest state library in each county in which the proposed **action** is to occur and one paper copy with the Hawaii Documents Center; and
    - (C) Distribute, or require the **applicant** to distribute, concurrently with its publication, the **draft EA** to other **agencies** having jurisdiction or expertise as well as citizen groups and individuals that the **proposing agency** or **approving agency** reasonably believes to be affected;
  - (2) When the document is a **final EA** with a **FONSI**, the **proposing agency** or **approving agency** shall:
    - (A) Incorporate, or require the **applicant** to incorporate, the **FONSI** into the contents of the **final EA**, as prescribed in sections 11-200.1-21 and 11-200.1-22;
    - (B) File the **final EA** and the incorporated **FONSI** with the **office**; and
    - (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **final EA** with the Hawaii Documents Center;
  - (3) When the document is a **final EA** with an **EISPN**, the **proposing agency** or **approving agency** shall:
    - (A) Incorporate, or require the **applicant** to incorporate, the **EISPN** into the contents of the **final EA**, as prescribed in sections 11-200.1-21, 11-200.1-22, and 11-200.1-23;
    - (B) File the incorporated **EISPN** with the **final EA** with the **office**; and
    - (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **final EA** with the Hawaii Documents Center;
  - (4) When the notice is an **EISPN** without the preparation of an **EA**, the **proposing agency** or **approving agency** shall:
    - (A) File the **EISPN** with the **office**; and

- (B) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **EISPN** at the nearest state library in each county in which the proposed **action** is to occur and one paper copy with the Hawaii Documents Center;
- (5) When the document is a **draft EIS**, the **proposing agency** or **applicant** shall:
  - (A) Sign and date the **draft EIS**;
  - (B) Indicate that the **draft EIS** and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10;
  - (C) File the **draft EIS** with the **accepting authority** and the **office** simultaneously;
  - (D) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **draft EIS** at the nearest state library in each county in which the proposed **action** is to occur and one paper copy with the Hawaii Documents Center; and
  - (E) Submit to the **office** one true and correct copy of the original audio file, at standard quality, of all oral comments received at the time designated within any **EIS public scoping meeting** for receiving oral comments;
- (6) When the document is a **final EIS**, the **proposing agency** or **applicant** shall:
  - (A) Sign and date the **final EIS**;
  - (B) Indicate that the **final EIS** and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10; and
  - (C) File the **final EIS** with the **accepting authority** and the **office** simultaneously;
- (7) When the notice is an **acceptance** or non-acceptance of a **final EIS**, the **accepting authority** shall:
  - (A) File the notice of **acceptance** or non-acceptance of a **final EIS** with the **office**; and
  - (B) Simultaneously transmit the notice to the **proposing agency** or **applicant**;
- (8) When the notice is of the withdrawal of an anticipated **FONSI**, **FONSI**, or **EISPN**, the **proposing agency** or **approving**

**agency** shall include a rationale of the withdrawal specifying any associated documents to be withdrawn;

- (9) When the notice is of the withdrawal of a **draft EIS** or **final EIS**, the **proposing agency** or **applicant** shall simultaneously file the notice with the **office** and submit the notice with the **accepting authority**; and
- (10) When the submittal is a changed version of a notice, document, or determination previously published and withdrawn, the submittal shall be filed as the "second" submittal, or "third" or "fourth", as appropriate. Example: A **draft EIS** is withdrawn and changed. It is then filed with the **office** for publication as the "second **draft EIS**" for the particular **action**.

[Eff 8/9/19] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

#### §11-200.1-6 Republication of notices, documents, and determinations.

- (a) An **agency** or **applicant** responsible for filing a chapter 343, HRS, notice, document, or determination may file an unchanged, previously published submittal in the **bulletin** provided that the filing requirements of this subchapter and any other publication requirements set forth in this chapter or chapter 343, HRS, are satisfied.
- (b) When the publication of a previously published chapter 343, HRS, notice, document, or determination involves a public comment period under this chapter or chapter 343, HRS:
  - (1) The public comment period shall be as required for that notice, document, or determination pursuant to this chapter or chapter 343, HRS, or as otherwise statutorily mandated (for example, publication of an unchanged **draft EIS** initiates a forty-five day public comment period upon publication in the **bulletin**); and
  - (2) Any comments received during the comment period must be considered in the same manner as set forth in this chapter and chapter 343, HRS, for that notice, document, or determination type, in addition to comments received in any other comment period associated with the publication of the notice, document, or determination.

[Eff 8/9/19] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-5, 343-6)

#### Subchapter 5 Responsibilities

#### §11-200.1-7 Identification of approving agency and accepting authority.

- (a) Whenever an **agency** proposes an **action**, the authority to accept an **EIS** shall rest with:

- (1) The governor, or the governor's authorized representative, whenever an **action** proposes the use of state lands or state funds or whenever a state agency proposes an **action** under section 11-200.1-8; or
  - (2) The mayor, or the mayor's authorized representative, of the respective county whenever an **action** proposes only the use of county lands or county funds.
- (b) For **agency actions** involving state and county lands, state and county funds, or both state and county lands and funds, the governor or the governor's authorized representative shall have final authority to accept the **EIS**. In cases involving only county funds or lands, the mayor of the respective county or the mayor's authorized representative shall have final authority to accept the **EIS**.
- (c) Whenever an **applicant** proposes an **action**, the authority for requiring an **EA** or **EIS**, making a determination regarding any required **EA**, and accepting any required **EIS** shall rest with the **approving agency** that initially received and agreed to process the request for an **approval**. With respect to **EISs**, this **approving agency** is also called the **accepting authority**.
- (d) If more than one **agency** is proposing the **action** or, in the case of **applicants**, more than one **agency** has jurisdiction over the **action**, and these **agencies** are unable to agree as to which **agency** has the responsibility for complying with chapter 343, HRS, the **agencies** involved shall consult with one another to determine which **agency** is responsible for compliance. In making the decision, the **agencies** shall take into consideration, including but not limited to, the following factors:
- (1) Which **agency** has the greatest responsibility for supervising or approving the **action** as a whole;
  - (2) Which **agency** can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
  - (3) Which **agency** has special expertise or greatest access to information relevant to the **action's** implementation and **impacts**;
  - (4) The extent of participation of each **agency** in the **action**; and
  - (5) In the case of an **action** with proposed use of state or county lands or funds, which **agency** has the most land or funds involved in the **action**.
- (e) If there is more than one **agency** that is proposing the **action**, or in the case of **applicants**, more than one **agency** has jurisdiction over the **action**, and after applying the criteria in subsection (d) these **agencies** are unable to agree as to which **agency** has the responsibility for complying with chapter 343, HRS, the **office**, after consultation with the **agencies** involved, shall apply the same considerations in subsection (d) to decide which **agency** is responsible for compliance.

- (f) The **office** shall not serve as the **accepting authority** for any **agency** or **applicant action**.
- (g) The **office** may provide recommendations to the **agency** or **applicant** responsible for the **EA** or **EIS** regarding any applicable administrative content requirements set forth in this chapter.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

#### Subchapter 6 Applicability

##### §11-200.1-8 Applicability of chapter 343, HRS, to agency actions.

- (a) Chapter 343, HRS, environmental review shall be required for any **agency action** that includes one or more **triggers** as identified in section 343-5(a), HRS.
  - (1) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license, etc.) or entitlement to those lands.
  - (2) Under section 343-5(a), HRS, any feasibility or planning study for possible future **programs** or **projects** that the **agency** has not approved, adopted, or funded are exempted from chapter 343, HRS, environmental review. Nevertheless, if an **agency** is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future **EA** or **EIS**.
- (b) When an **agency** proposes an **action** during a governor-declared state of emergency, the **proposing agency** shall document in its records that the **emergency action** was undertaken pursuant to a specific emergency proclamation. If the **emergency action** has not substantially commenced within sixty days of the emergency proclamation, the **action** will be subject to chapter 343, HRS.
- (c) In the event of a sudden unexpected emergency causing or likely to cause loss or damage to life, health, property, or essential public service, but for which a declaration of a state of emergency has not been made, a **proposing agency** undertaking an **emergency action** shall document in its records that the **emergency action** was undertaken pursuant to a specific emergency and shall include the **emergency action** on its list of **exemption notices** for publication by the **office** in the **bulletin** pursuant to section 11-200.1-17(d) and subchapter 4.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

##### §11-200.1-9 Applicability of chapter 343, HRS, to applicant actions.

- (a) Chapter 343, HRS, environmental review shall be required for any **applicant action** that:

- (1) Requires one or more **approvals** prior to implementation; and
  - (2) Includes one or more **triggers** identified in section 343-5(a), HRS.
    - (A) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license, etc.) or entitlement to those lands.
    - (B) Under section 343-5(a)(1), HRS, **actions** involving agricultural tourism under section 205-2(d)(11) or section 205-4.5(a)(13), HRS, are subject to environmental review when the respective county requires environmental review under an ordinance adopted pursuant to section 205-5(b), HRS.
- (b) Chapter 343, HRS, does not require environmental review for **applicant actions** when:
- (1) Notwithstanding any other law to the contrary, for any **primary action** that requires a permit or **approval** that is not subject to a **discretionary consent** and that involves a **secondary action** that is ancillary and limited to the installation, improvement, renovation, construction, or development of **infrastructure** within an existing public right-of-way or highway, that **secondary action** shall be exempt from this chapter; provided that the **applicant** for the primary **action** shall submit documentation from the appropriate **agency** confirming that no further discretionary **approvals** are required.
  - (2) As used in this subsection:

"**Discretionary consent**" means an **action** as defined in section 343-2, HRS; or an **approval** from a decision-making authority in an **agency**, which **approval** is subject to a public hearing.

"**Infrastructure**" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"**Primary action**" means an **action** outside of the highway or public right-of-way that is on private property.

"**Secondary action**" means an **action** involving **infrastructure** within the highway or public right-of-way.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-5.5, 343-6) (Imp: HRS §§343-5, 343-5.5, 343-6)

§11-200.1-10 Multiple or phased actions.

A group of **actions** 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.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions.

- (a) When an **agency** is considering whether a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS, for a proposed **action**, the **agency** may determine that additional environmental review is not required because:
  - (1) The proposed **action** was a component of, or is substantially similar to, an **action** that received an exemption, **FONSI**, or an accepted **EIS** (for example, a **project** that was analyzed in a **program EIS**);
  - (2) The proposed **action** is anticipated to have **direct, indirect, and cumulative effects** similar to those analyzed in a prior exemption, **final EA**, or accepted **EIS**; and
  - (3) In the case of a **final EA** or an accepted **EIS**, the proposed **action** was analyzed within the range of alternatives.
- (b) When an **agency** determines that a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS, for a proposed **action**, the **agency** may submit a brief written determination explaining its rationale to the **office** for publication pursuant to section 11-200.1-4 and the proposed **action** may proceed without further chapter 343, HRS, environmental review.
- (c) When an **agency** determines that the proposed **action** warrants environmental review, the **agency** may submit a brief written determination explaining its rationale to the **office** for publication pursuant to section 11-200.1-4 and the **agency** shall proceed to comply with subchapter 7.
- (d) **Agencies** shall not, without careful examination and comparison, use past determinations and previous **EISs** to apply to the **action** at hand. The **action** for which a determination is sought shall be thoroughly

reviewed prior to the use of previous determinations and previously accepted **EISs**. Further, when previous determinations and previous **EISs** are considered or incorporated by reference, they shall be substantially relevant to the **action** being considered.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

## Subchapter 7 Determination of Significance

### §11-200.1-12 Consideration of previous determinations and accepted statements.

A **proposing agency** or **applicant** may incorporate information or analysis from a relevant prior **exemption notice**, **final EA**, or accepted **EIS** into an **exemption notice**, **EA**, **EISPN**, or **EIS**, for a proposed **action** whenever the information or analysis is pertinent and has logical relevancy and bearing to the proposed **action** (for example, a **project** that was broadly considered as part of an accepted **program EIS** may incorporate relevant portions from the accepted **program EIS** by reference).

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

### §11-200.1-13 Significance criteria.

- (a) In considering the significance of potential environmental **effects**, **agencies** shall consider and evaluate the sum of **effects** of the proposed **action** on the quality of the **environment**.
- (b) In determining whether an **action** may have a **significant effect** on the **environment**, the **agency** shall consider every phase of a proposed **action**, the expected **impacts**, and the proposed mitigation measures. In most instances, an **action** shall be determined to have a **significant effect** on the **environment** if it may:
  - (1) Irrevocably commit a natural, cultural, or historic resource;
  - (2) Curtail the range of beneficial uses of the **environment**;
  - (3) Conflict with the State's environmental policies or long-term environmental goals established by law;
  - (4) Have a substantial adverse **effect** on the economic welfare, social welfare, or cultural practices of the community and State;
  - (5) Have a substantial adverse **effect** on public health;
  - (6) Involve adverse **secondary impacts**, such as population changes or **effects** on public facilities;
  - (7) Involve a substantial degradation of environmental quality;
  - (8) Be individually limited but cumulatively have substantial adverse **effect** upon the **environment** or involves a commitment for larger **actions**;
  - (9) Have a substantial adverse **effect** on a rare, threatened, or endangered species, or its habitat;



- (10) Have a substantial adverse **effect** on air or water quality or ambient noise levels;
- (11) 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;
- (12) Have a substantial adverse **effect** on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or
- (13) Require substantial energy consumption or emit substantial greenhouse gases.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

§11-200.1-14 Determination of level of environmental review.

- (a) For an **agency action**, through its judgment and experience, a **proposing agency** shall assess the significance of the potential **impacts** of the **action** to determine the level of environmental review necessary for the **action**.
- (b) For an **applicant action**, within thirty days from the receipt of the **applicant's** complete request for **approval** to the **approving agency**, through its judgment and experience, an **approving agency** shall assess the significance of the potential **impacts** of the **action** to determine the level of environmental review necessary for the **action**.
- (c) If the **proposing agency** or **approving agency** determines, through its judgment and experience, that the **action** will individually and cumulatively probably have minimal or no **significant effects**, and the **action** is one that is eligible for exemption under subchapter 8, then the **proposing agency** or the **approving agency** in the case of an **applicant** may prepare an **exemption notice** in accordance with subchapter 8.
- (d) If the **proposing agency** or **approving agency** determines, through its judgment and experience that the **action** is not eligible for an exemption, then the **proposing agency** shall prepare, or the **approving agency** shall require the **applicant** to prepare, an **EA** beginning with a **draft EA** in accordance with subchapter 9, unless:
  - (1) In the course of preparing the **draft EA**, the **proposing agency** or **approving agency** determines, through its judgment and experience that the **action** may have a **significant effect** and therefore require preparation of an **EIS**, then the **proposing agency** may prepare, or the **approving agency** may authorize the **applicant** to prepare, an **EA** as a **final EA** to support the determination prior to preparing or requiring preparation of an **EIS** in accordance with subchapter 10; or

- (2) The **proposing agency** or **approving agency** determines, through its judgment and experience that an **EIS** is likely to be required, then the **proposing agency** may choose to prepare, or an **approving agency** may authorize an **applicant** to prepare, an **EIS** in accordance with subchapter 10, beginning with preparation of an **EISPN**.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

#### Subchapter 8 Exempt Actions, List, and Notice Requirements

##### §11-200.1-15 General types of actions eligible for exemption.

- (a) Some **actions**, because they will individually and cumulatively probably have minimal or no **significant effects**, can be declared exempt from the preparation of an **EA**.
- (b) **Actions** declared exempt from the preparation of an **EA** under this subchapter are not exempt from complying with any other applicable statute or rule.
- (c) The following general types of **actions** are eligible for exemption:
  - (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing;
  - (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
  - (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small equipment or facilities and the alteration and modification of the equipment or facilities, including, but not limited to:
    - (A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed **action** is being considered, if not in conjunction with the building of two or more such units;
    - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
    - (C) Stores, offices, and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and
    - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures

including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

- (4) Minor alterations in the conditions of land, water, or vegetation;
  - (5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource;
  - (6) Demolition of structures, except those structures that are listed on the national register or Hawaii Register of Historic Places;
  - (7) Zoning variances except shoreline setback variances;
  - (8) Continuing administrative activities;
  - (9) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond previously existing uses, and for which the legislature has appropriated or otherwise authorized funding; and
  - (10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county **proposing agency** or **approving agency**, that meets the following:
    - (A) Has the use of state or county lands or funds or is within Waikiki as the sole **triggers** for compliance with chapter 343, HRS;
    - (B) As proposed conforms with the existing state urban land use classification;
    - (C) As proposed is consistent with the existing county zoning classification that allows housing; and
    - (D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200.1-13(b)(11).
- (d) All exemptions under subchapter 8 are inapplicable when the **cumulative impact** of planned successive **actions** in the same place, over time, is **significant**, or when an **action** that is normally insignificant in its **impact** on the **environment** may be **significant** in a particularly sensitive **environment**.
- (e) Any **agency**, at any time, may request that a new exemption type be added, or that an existing one be amended or deleted. The request shall be submitted to the **council**, in writing, and contain detailed information to support the request as set forth in section 11-201-16, HAR, environmental council rules.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-16 Exemption lists.

- (a) Each **agency**, through time and experience, may develop its own **exemption list** consistent with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of:
  - (1) Routine activities and ordinary functions within the jurisdiction or expertise of the **agency** that by their nature do not have the potential to individually or cumulatively adversely affect the **environment** more than negligibly and that the **agency** considers to not rise to the level of requiring chapter 343, HRS, environmental review. Examples of routine activities and ordinary functions may include, among others: routine repair, routine maintenance, purchase of supplies, and continuing administrative activities involving personnel only, nondestructive data collection, installation of routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveyances; and
  - (2) Types of **actions** that the **agency** considers to be included within the exempt general types listed in section 11-200.1-15.
- (b) An **agency** may use part one of its **exemption list**, developed pursuant to subsection (a)(1), to exempt a specific activity from preparation of an **EA** and the requirements of section 11-200.1-17 because the **agency** considers the specific activity to be de minimis.
- (c) An **agency** may use part two of its **exemption list**, developed pursuant to subsection (a)(2), to exempt from preparation of an **EA** a specific **action** that the **agency** determines to be included under the types of **actions** in its **exemption list**, provided that the **agency** fulfills the **exemption notice** requirements set forth in section 11-200.1-17 and chapter 343, HRS.
- (d) These **exemption lists** and any amendments to the **exemption lists** shall be submitted to the **council** for review and concurrence no later than seven years after the previous concurrence; provided that in the event the **council** is unable to meet due to quorum when a concurrence for an **agency exemption list** is seven years or older, the **agency** may submit a letter to the **council** acknowledging that the existing **exemption list** is still valid. Upon attaining quorum, the **council** shall review the **exemption list** for concurrence. The **council** may review **agency exemption lists** periodically.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-17 Exemption notices.

- (a) Each **agency** shall create an **exemption notice** for an **action** that it has found to be exempt from the requirements for preparation of an **EA** pursuant to section 11-200.1-16(a)(2) or that an **agency** considers to be

included within a general type of **action** pursuant to section 11-200.1-15. An **agency** may create an **exemption notice** for an **action** that it has found to be exempt from the requirements for preparation of an **EA** pursuant to section 11-200.1-16(a)(1) or that an **agency** considers to be a routine activity and ordinary function within the jurisdiction or expertise of the **agency** that by its nature does not have the potential to individually or cumulatively adversely affect the **environment** more than negligibly.

- (b) To declare an exemption prior to implementing an **action**, an **agency** shall undertake an analysis to determine whether the **action** merits exemption pursuant to section 11-200.1-15 and is consistent with one or several of the general types listed in section 11-200.1-15 or the **agency's exemption list** produced in accordance with section 11-200.1-16, and whether **significant cumulative impacts** or particularly sensitive **environments** would make the exemption inapplicable. An **agency** shall obtain the advice of other outside **agencies** or individuals having jurisdiction or expertise on the propriety of the exemption. This analysis and consultation shall be documented in an **exemption notice**.
- (c) Each **agency** shall electronically provide its **exemption notices** for review upon request by the public or an **agency**, and shall submit a list of **exemption notices** that the **agency** has created to the **office** for publication in the **bulletin** on the eighth day of each month pursuant to subchapter 4.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

#### Subchapter 9 Preparation of Environmental Assessments

##### §11-200.1-18 Preparation and contents of a draft environmental assessment.

- (a) A **proposing agency** shall conduct, or an **approving agency** shall require an **applicant** to conduct, early consultation seeking, at the earliest practicable time, the advice and input of the county **agency** responsible for implementing the county's general plan for each county in which the proposed **action** is to occur, and consult with other **agencies** having jurisdiction or expertise as well as those citizen groups and individuals that the **proposing agency** or **approving agency** reasonably believes may be affected.
- (b) The scope of the **draft EA** may vary with the scope of the proposed **action** and its **impact**, taking into consideration whether the **action** is a **project** or a **program**. Data and analyses in a **draft EA** shall be commensurate with the importance of the **impact**, and less important material may be summarized, consolidated, or simply referenced. A **draft EA** shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the **draft EA**, including cost-benefit analyses and reports required under other legal authorities.
- (c) The level of detail in a **draft EA** may be more broad for **programs** or components of a **program** for which site-specific **impacts** are not

discernible, and shall be more specific for components of the **program** for which site-specific, **project-level impacts** are discernible. A **draft EA** for a **program** may, where necessary, omit evaluating issues that are not yet ready for decision at the **project** level. Analysis of the **program** may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

- (d) A **draft EA** shall contain, but not be limited to, the following information:
- (1) Identification of the **applicant** or **proposing agency**;
  - (2) For **applicant actions**, identification of the **approving agency**;
  - (3) List of all required permits and **approvals** (state, federal, and county) and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;
  - (4) Identification of **agencies**, citizen groups, and individuals consulted in preparing the **draft EA**;
  - (5) General description of the **action's** technical, economic, social, cultural, historical, and environmental characteristics;
  - (6) Summary description of the affected **environment**, including suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, or state sea level rise exposure area maps;
  - (7) Identification and analysis of **impacts** and alternatives considered;
  - (8) Proposed mitigation measures;
  - (9) **Proposing agency** or **approving agency** anticipated determination, including findings and reasons supporting the anticipated **FONSI**, if applicable; and
  - (10) Written comments, if any, and responses to the comments received, if any, and made pursuant to the early consultation provisions of subsection (a) and statutorily prescribed public review periods.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-19 Notice of determination for draft environmental assessments.

- (a) After:
- (1) Preparing, or causing to be prepared, a **draft EA**;
  - (2) Reviewing any public and **agency** comments; and
  - (3) Applying the significance criteria in section 11-200.1-13,

if the **proposing agency** or the **approving agency** anticipates that the proposed **action** is not likely to have a **significant effect**, the **proposing agency** or **approving agency** shall issue a notice of an anticipated **FONSI** subject to the public review provisions of section 11-200.1-20.

- (b) The **proposing agency** or **approving agency** shall file the notice of anticipated **FONSI** and supporting **draft EA** with the **office** as early as possible in accordance with subchapter 4 after the determination is made pursuant to and in accordance with this subchapter and the requirements in subsection (c). For **applicant actions**, the **approving agency** shall also send the anticipated **FONSI** to the **applicant**.
- (c) The notice of an anticipated **FONSI** shall include in a concise manner:
  - (1) Identification of the **proposing agency** or **applicant**;
  - (2) For **applicant actions**, identification of the **approving agency**;
  - (3) A brief description of the **action**;
  - (4) The anticipated **FONSI**;
  - (5) Reasons supporting the anticipated **FONSI**; and
  - (6) The name, title, email address, physical address, and phone number of an individual representative of the **proposing agency** or **approving agency** who may be contacted for further information.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-20 Public review and response requirements for draft environmental assessments.

- (a) This section shall apply only if a **proposing agency** or an **approving agency** anticipates a **FONSI** determination for a proposed **action** and the **proposing agency** or the **applicant** has completed the **draft EA** requirements of sections 11-200.1-18 and 11-200-19.
- (b) Unless mandated otherwise by statute, the period for public review and for submitting written comments shall be thirty days from the date of publication of the **draft EA** in the **bulletin**. Written comments shall be received by or postmarked to the **proposing agency**, or in the case of **applicants**, to either the **approving agency** or **applicant** within the thirty-day period. Any comments outside of the thirty-day period need not be responded to nor considered in the **final EA**.
- (c) For **agency actions**, the **proposing agency** shall, and for **applicant actions**, the **applicant** shall: respond in the **final EA** in the manner prescribed in this section to all substantive comments received or postmarked during the statutorily mandated review period, incorporate comments into the **final EA** as appropriate, and include the comments and responses in the **final EA**. In deciding whether a written comment is substantive, the **proposing agency** or **applicant** shall give careful consideration to the validity, significance, and relevance of the comment

to the scope, analysis, or process of the **EA**, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the **proposing agency** or **applicant** as non-substantive and to which no response was provided shall be clearly indicated.

- (d) Proposing **agencies** and **applicants** shall respond in the **final EA** to all substantive comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:
- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (e), must be appended in full to the **final EA**; or
  - (2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (e), must either be included with the response or appended in full to the **final EA**.
- (e) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
- (1) The response may be grouped under subsection (d)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or
  - (2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the **final EA**;
- provided that, if a commenter adds a distinct substantive comment to a form letter or petition, that comment must be responded to pursuant to subsection (d).
- (f) In responding to substantive written comments, proposing **agencies** and **applicants** shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed **action** to mitigate anticipated **impacts** or objections raised in the comment, or may refute



all or part of the comment). In particular, the issues raised when the **proposing agency's** or **applicant's** position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the **draft EA**.

- (g) An **addendum** document to a **draft EA** shall reference the original **draft EA** it attaches to and shall comply with all applicable filing, public review, and comment requirements set forth in subchapters 4 and 9.

[Eff 8/9/19] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

#### §11-200.1-21 Contents of a final environmental assessment.

A **final EA** shall contain, but not be limited to, the following information:

- (1) Identification of **applicant** or **proposing agency**;
- (2) For **applicant actions**, identification of the **approving agency**;
- (3) Identification of **agencies**, citizen groups, and individuals consulted in preparing the **EA**;
- (4) General description of the **action's** technical, economic, social, cultural, historical, and environmental characteristics;
- (5) Summary description of the affected **environment**, including suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, or state sea level rise exposure area maps;
- (6) Identification and analysis of **impacts** and alternatives considered;
- (7) Proposed mitigation measures;
- (8) The **agency** determination and the findings and reasons supporting the determination;
- (9) List of all required permits and **approvals** (state, federal, and county) and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review; and
- (10) Written comments, if any, and responses to the comments received, if any, pursuant to the early consultation provisions of section 11-200.1-18(a), and statutorily prescribed public review periods in accordance with section 11-200.1-20.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-22 Notice of determination for final environmental assessments.

- (a) After:
- (1) Preparing, or causing to be prepared, a **final EA**;
  - (2) Reviewing any public and **agency** comments; and
  - (3) Applying the significance criteria in section 11-200.1-13,
- the **proposing agency** or the **approving agency** shall issue a notice of a **FONSI** or **EISPN** in accordance with subchapter 9, and file the notice with the **office** in accordance with subchapter 4. For **applicant actions**, the **approving agency** shall issue a determination within thirty days of receiving the **final EA**.
- (b) If the **proposing agency** or **approving agency** determines that a proposed **action** is not likely to have a **significant effect**, it shall issue a notice of a **FONSI**.
- (c) If the **proposing agency** or **approving agency** determines that a proposed **action** may have a **significant effect**, it shall issue an **EISPN**.
- (d) The **proposing agency** or **approving agency** shall file in accordance with subchapter 4 the notice and the supporting **final EA** with the **office** as early as possible after the determination is made, addressing the requirements in subsection (e). For **applicant actions**, the **approving agency** shall send the notice of determination for an **EISPN** or **FONSI** to the **applicant**.
- (e) The notice of a **FONSI** shall indicate in a concise manner:
- (1) Identification of the **proposing agency** or **applicant**;
  - (2) For **applicant actions**, identification of the **approving agency**;
  - (3) A brief description of the proposed **action**;
  - (4) The determination;
  - (5) Reasons supporting the determination; and
  - (6) The name, title, email address, physical address, and phone number of an individual representative of the **proposing agency** or **approving agency** who may be contacted for further information.
- (f) The notice of determination for an **EISPN** shall be prepared pursuant to section 11-200.1-23.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

Subchapter 10 Preparation of Environmental Impact Statements

§11-200.1-23 Consultation prior to filing a draft environmental impact statement.

- (a) An **EISPN**, including one resulting from an **agency** authorizing the preparation of an **EIS** without first requiring an **EA**, shall indicate in a concise manner:
  - (1) Identification of the **proposing agency or applicant**;
  - (2) Identification of the **accepting authority**;
  - (3) List of all required permits and **approvals** (state, federal, and county) and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;
  - (4) The determination to prepare an **EIS**;
  - (5) Reasons supporting the determination to prepare an **EIS**;
  - (6) A description of the proposed **action** and its location;
  - (7) A description of the affected **environment**, including regional, location, and site maps;
  - (8) Possible alternatives to the proposed **action**;
  - (9) The **proposing agency's** or **applicant's** proposed scoping process, including when and where any **EIS public scoping meeting** will be held; and
  - (10) The name, title, email address, physical address, and phone number of an individual representative of the **proposing agency** or **applicant** who may be contacted for further information.
- (b) In the preparation of a **draft EIS**, proposing **agencies** and **applicants** shall consult all appropriate **agencies**, including the county **agency** responsible for implementing the county's general plan for each county in which the proposed **action** is to occur and **agencies** having jurisdiction or expertise, as well as those citizen groups, and concerned individuals that the **accepting authority** reasonably believes to be affected. To this end, **agencies** and **applicants** shall endeavor to develop a fully acceptable **draft EIS** prior to the time the **draft EIS** is filed with the **office**, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.
- (c) Upon publication of an **EISPN** in the **periodic bulletin**, **agencies**, citizen groups, or individuals shall have a period of thirty days from the initial publication date to make written comments regarding the environmental **effects** of the proposed **action**. With explanation, the **accepting authority** may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the **draft EIS** pursuant to section 11-200.1-24. For purposes of the **EIS public scoping meeting**, substantive comments shall be those pertaining to the scope of the **EIS**.

- (d) No fewer than one **EIS public scoping meeting** addressing the scope of the **draft EIS** shall be held on the island or islands most affected by the proposed **action**, within the public review and comment period in subsection (c). The **EIS public scoping meeting** shall include a separate portion reserved for oral public comments and that portion of the **EIS public scoping meeting** shall be audio recorded.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-24 Content requirements; draft environmental impact statement.

- (a) The **draft EIS**, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed **action** and shall discuss all reasonably foreseeable consequences of the **action**. In order that the public can be fully informed and that the **accepting authority** can make a sound decision based upon the full range of responsible opinion on environmental **effects**, an **EIS** shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.
- (b) The scope of the **draft EIS** may vary with the scope of the proposed **action** and its **impact**, taking into consideration whether the **action** is a **project** or a **program**. Data and analyses in a **draft EIS** shall be commensurate with the importance of the **impact**, and less important material may be summarized, consolidated, or simply referenced. A **draft EIS** shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the **draft EIS**, including cost-benefit analyses and reports required under other legal authorities.
- (c) The level of detail in a **draft EIS** may be more broad for **programs** or components of a **program** for which site-specific **impacts** are not discernible, and shall be more specific for components of the **program** for which site-specific, **project-level impacts** are discernible. A **draft EIS** for a **program** may, where necessary, omit evaluating issues that are not yet ready for decision at the **project** level. Analysis of the **program** may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.
- (d) The **draft EIS** shall contain a summary that concisely discusses the following:
  - (1) Brief description of the **action**;
  - (2) **Significant** beneficial and adverse **impacts**;
  - (3) Proposed mitigation measures;
  - (4) Alternatives considered;
  - (5) Unresolved issues;
  - (6) Compatibility with land use plans and policies, and a list of permits or **approvals**; and

- (7) A list of relevant **EAs** and **EISs** considered in the analysis of the preparation of the **EIS**.
- (e) The **draft EIS** shall contain a table of contents.
- (f) The **draft EIS** shall contain a separate and distinct section that includes the purpose and need for the proposed **action**.
- (g) The **draft EIS** shall contain a description of the **action** that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental **impact**:
  - (1) A detailed map (such as a United States Geological Survey topographic map, Flood Insurance Rate Maps, Floodway Boundary Maps, or state sea level rise exposure area maps, as applicable) and a related regional map;
  - (2) Objectives of the proposed **action**;
  - (3) General description of the **action's** technical, economic, social, cultural, and environmental characteristics;
  - (4) Use of state or county funds or lands for the **action**;
  - (5) Phasing and timing of the **action**;
  - (6) Summary technical data, diagrams, and other information necessary to enable an evaluation of potential environmental **impact** by commenting **agencies** and the public; and
  - (7) Historic perspective.
- (h) The **draft EIS** shall describe in a separate and distinct section discussion of the alternative of no **action** as well as reasonable alternatives that could attain the objectives of the **action**. The section shall include a rigorous exploration and objective evaluation of the environmental **impacts** of all such alternative **actions**. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**, costs, and risks of the **action**. Examples of alternatives include:
  - (1) Alternatives requiring **actions** of a significantly different nature that would provide similar benefits with different environmental **impacts**;
  - (2) Alternatives related to different designs or details of the proposed **action** that would present different environmental **impacts**; and
  - (3) Alternative locations for the proposed **action**.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed **action** and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail. For any **agency actions**, the discussion of alternatives shall include, where

relevant, those alternatives not within the existing authority of the **agency**.

- (i) The **draft EIS** shall include a description of the environmental setting, including a description of the **environment** in the vicinity of the **action**, as it exists before commencement of the **action**, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the **action** site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related **actions**, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall **cumulative impacts** of such **actions**. Proposing **agencies** and **applicants** shall also identify, where appropriate, population and growth characteristics of the affected area, any population and growth assumptions used to justify the proposed **action**, and any secondary population and growth **impacts** resulting from the proposed **action** and its alternatives. The **draft EIS** shall expressly note the sources of data used to identify, qualify, or evaluate any and all environmental consequences.
- (j) The **draft EIS** shall include a description of the relationship of the proposed **action** to land use and natural or cultural resource plans, policies, and controls for the affected area. Discussion of how the proposed **action** may conform or conflict with objectives and specific terms of approved or proposed land use and resource plans, policies, and controls, if any, for the affected area shall be included. Where a conflict or inconsistency exists, the **draft EIS** shall describe the extent to which the **agency** or **applicant** has reconciled its proposed **action** with the plan, policy, or control, and the reasons why the **agency** or **applicant** has decided to proceed, notwithstanding the absence of full reconciliation.
- (k) The **draft EIS** shall also contain a list of necessary **approvals** required for the **action** from governmental **agencies**, boards, or commissions or other similar groups having jurisdiction. The status of each identified **approval** shall also be described.
- (l) The **draft EIS** shall include an analysis of the probable **impact** of the proposed **action** on the **environment**, and **impacts** of the natural or human **environment** on the **action**. This analysis shall include consideration of all phases of the **action** and consideration of all consequences on the **environment**, including **direct** and **indirect effects**. The interrelationships and **cumulative** environmental **impacts** of the proposed **action** and other related **actions** shall be discussed in the **draft EIS**. The **draft EIS** should recognize that several **actions**, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource **actions**, etc.) may well stimulate or induce **secondary effects**. These **secondary effects** may be equally important as, or more important than, **primary effects**, and shall be thoroughly discussed to fully describe the probable **impact** of the proposed **action** on the **environment**. The population and growth **impacts** of an **action** shall be estimated if expected to be **significant**, and an evaluation shall be

made of the **effects** of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed **action** constitutes a direct or indirect source of pollution as determined by any governmental **agency**, necessary data regarding these **impacts** shall be incorporated into the **EIS**. The significance of the **impacts** shall be discussed in terms of subsections (m), (n), (o), and (p).

- (m) The **draft EIS** shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's **environment** and the maintenance and enhancement of long-term productivity. The extent to which the proposed **action** involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed **action** forecloses future options, narrows the range of beneficial uses of the **environment**, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed **action**.
- (n) The **draft EIS** shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed **action** should it be implemented. Identification of unavoidable **impacts** and the extent to which the **action** makes use of non-renewable resources during the phases of the **action**, or irreversibly curtails the range of potential uses of the **environment**, shall also be included. The possibility of environmental accidents resulting from any phase of the **action** shall also be considered.
- (o) The **draft EIS** shall address all probable adverse environmental **effects** that cannot be avoided. Any adverse **effects** such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy including those found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, and those **effects** discussed in this section that are adverse and unavoidable under the proposed **action** must be addressed in the **draft EIS**. Also, the rationale for proceeding with a proposed **action**, notwithstanding unavoidable **effects**, shall be clearly set forth in this section. The **draft EIS** shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental **effects** of the proposed **action**. The **draft EIS** shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the

proposed **action** that would avoid some or all of the adverse environmental **effects**.

- (p) The **draft EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce **impacts**, including provision for compensation for losses of cultural, community, historical, archaeological, and fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the **action** plan to reduce **significant**, unavoidable, adverse **impacts** to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. The **draft EIS** shall include, where possible, specific reference to the timing of each step proposed to be taken in any mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will in fact be taken in the event the **action** is implemented.
- (q) The **draft EIS** shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the **action**, or what overriding reasons there are for proceeding without resolving the issues.
- (r) The **draft EIS** shall include a separate and distinct section that contains a list identifying all governmental **agencies**, other organizations and private individuals consulted in preparing the **draft EIS**, and shall disclose the identity of the **persons**, firms, or **agency** preparing the **draft EIS**, by contract or other authorization.
- (s) The **draft EIS** shall include a separate and distinct section that contains:
  - (1) Reproductions of all written comments submitted during the consultation period required in section 11-200.1-23;
  - (2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. Proposing **agencies** and **applicants** shall respond in the **draft EIS** to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:
    - (A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commenter identified in each applicable topic



- area. All comments, except those described in paragraph (3), must be appended in full to the final document; or
- (B) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in paragraph (3), must either be included with the response, or appended in full to the final document;
- (3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
- (A) The response may be grouped under paragraph (2)(A) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or
  - (B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and
  - (C) Provided that, if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to paragraph (2);
- (4) A summary of any **EIS public scoping meetings**, including a written general summary of the oral comments made, and a representative sample of any handout provided by the **proposing agency** or **applicant** related to the **action** provided at any **EIS public scoping meeting**;
- (5) A list of those **persons** or **agencies** who were consulted and had no comment in a manner indicating that no comment was provided; and
- (6) A representative sample of the consultation request letter.
- (t) An **addendum** to a **draft EIS** shall reference the original **draft EIS** to which it attaches and comply with all applicable filing, public review, and comment requirements set forth in subchapter 10.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-25 Public review requirements for draft environmental impact statements.

- (a) Public review shall not substitute for early and open discussion with interested **persons** and **agencies** concerning the environmental **impacts** of a proposed **action**. Review of the **draft EIS** shall serve to provide the public and other **agencies** an opportunity to discover the

extent to which a **proposing agency** or **applicant** has examined environmental concerns and available alternatives.

- (b) The period for public review and for submitting written comments shall commence from the date that notice of availability of the **draft EIS** is initially published in the **periodic bulletin** and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments shall be received by or postmarked to the **accepting authority**, and in the case of **applicants**, to either the **accepting authority** or the **applicant**, within the forty-five-day comment period. Any comments outside of the forty-five-day comment period need not be responded to nor considered.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-26 Comment response requirements for draft environmental impact statements.

- (a) In accordance with the content requirements of section 11-200.1-27, the **proposing agency** or **applicant** shall respond within the **final EIS** to all substantive written comments received pursuant to section 11-200.1-25. In deciding whether a written comment is substantive, the **proposing agency** or **applicant** shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the **EIS**, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the **proposing agency** or **applicant** as non-substantive and to which no response was provided shall be clearly indicated.
- (b) Proposing **agencies** and **applicants** shall respond in the **final EIS** to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:
- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (c), must be appended in full to the final document; or
  - (2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (c), must either be included with the response or appended in full to the final document.
- (c) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

- (1) The response may be grouped under subsection (b)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or
- (2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document;

provided that if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (d).

- (d) In responding to substantive written comments, proposing **agencies** and **applicants** shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed **action** to mitigate anticipated **impacts** or objections raised in the comment). In particular, the issues raised when the **proposing agency's** or **applicant's** position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the **draft EIS**.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

#### §11-200.1-27 Content requirements; final environmental impact statement.

- (a) The **final EIS**, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed **action** and shall discuss all reasonably foreseeable consequences of the **action**. In order that the public can be fully informed and the **accepting authority** can make a sound decision based upon the full range of responsible opinion on environmental **effects**, an **EIS** shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.
- (b) The **final EIS** shall consist of:
  - (1) The **draft EIS** prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;
  - (2) A list of **persons**, organizations, and public **agencies** commenting on the **draft EIS**;

- (3) A list of those **persons** or **agencies** who were consulted in preparing the **final EIS** and those who had no comment shall be included in a manner indicating that no comment was provided;
- (4) A written general summary of oral comments made at any **EIS public scoping meeting**; and
- (5) The text of the **final EIS** written in a format that allows the reader to easily distinguish changes made to the text of the **draft EIS**.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-28 Acceptability.

- (a) Acceptability of a **final EIS** shall be evaluated on the basis of whether the **final EIS**, in its completed form, represents an informational instrument that fulfills the intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental **impacts** and satisfactorily responds to review comments.
- (b) A **final EIS** shall be deemed to be an acceptable document by the **accepting authority** only if all of the following criteria are satisfied:
  - (1) The procedures for assessment, consultation process, review, and the preparation and submission of the **EIS**, from proposal of the **action** to publication of the **final EIS**, have all been completed satisfactorily as specified in this chapter;
  - (2) The content requirements described in this chapter have been satisfied; and
  - (3) Comments submitted during the review process have received responses satisfactory to the **accepting authority**, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated into the **final EIS**.
- (c) The **proposing agency, applicant, or accepting authority** may request the **office** to make a recommendation regarding the acceptability or non-acceptability of the **EIS**. If the **office** decides to make a recommendation, it shall submit the recommendation to the **proposing agency, applicant, and accepting authority**, as applicable. For **applicant actions**, the **office** shall submit the recommendation to the **applicant** and the **accepting authority** within the period for the **accepting authority** to determine the acceptability of the **final EIS**.
- (d) The **accepting authority** shall take prompt measures to determine the acceptability or non-acceptability of the **proposing agency's EIS**.
- (e) Upon **acceptance** or non-acceptance of the **EIS**:
  - (1) For **agency actions**, a notice shall be filed by the **accepting authority** with both the **proposing agency** and the **office**. For any non-accepted **EIS**, the notice shall contain specific findings and reasons for non-acceptance. The **office** shall publish notice

of the determination of **acceptance** or non-acceptance in the **periodic bulletin** in accordance with subchapter 4. **Acceptance** of a required **statement** shall be a condition precedent to the use of state or county lands or funds in implementing the proposed **action**.

- (2) For **applicant actions**, the **accepting authority** shall:
- (A) Notify the **applicant** of its determination, and provide specific findings and reasons. The **accepting authority** shall also provide a copy of this determination to the **office** for publication in the **periodic bulletin**. **Acceptance** of the required **EIS** shall be a condition precedent to **approval** of the request and commencement of the proposed **action**.
  - (B) Notify the **applicant** and the **office** of the **acceptance** or non-acceptance of the **final EIS** within thirty days of the **final EIS** submission to the **agency**; provided that the thirty-day period may, at the request of the **applicant**, be extended for a period not to exceed fifteen days. The request shall be made to the **accepting authority** in writing. Upon receipt of an **applicant's** written request for an extension of the thirty-day **acceptance** period, the **accepting authority** shall notify the **office** and **applicant** in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the **applicant's** request. An extension of the thirty-day **acceptance** period shall not be granted merely for the convenience of the **accepting authority**. If the **accepting authority** fails to make a determination of **acceptance** or non-acceptance of the **EIS** within thirty days of the receipt of the **final EIS**, then the **statement** shall be deemed accepted.
- (f) A non-accepted **EIS** may be revised by a **proposing agency** or **applicant**. The revision shall take the form of a revised **draft EIS** which shall fully address the inadequacies of the non-accepted **EIS** and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, **acceptance** or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by subchapters 4 and 10 for an **EIS** submitted for **acceptance**. In addition, the subsequent revised **final EIS** shall be evaluated for **acceptability** on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.
- (g) A **proposing agency** or **applicant** may withdraw an **EIS** by simultaneously sending a written notification to the **office** and to the **accepting authority** informing the **office** of the **proposing agency's** or **applicant's** withdrawal. Subsequent resubmittal of the **EIS** shall meet all requirements for filing, distribution, publication, review, **acceptance**, and notification as a **draft EIS**.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-29 Appeals to the council.

An **applicant**, within sixty days after a non-acceptance determination by the **accepting authority** under section 11-200.1-28 of a **final EIS**, may appeal the non-**acceptance** to the **council**, which within the statutorily mandated period after receipt of the appeal, shall notify the **applicant** appealing of its determination to affirm the **accepting authority's** non-acceptance or to reverse it. The **council** chairperson shall include the appeal on the agenda of the next **council** meeting following receipt of the appeal. In any affirmation or reversal of an appealed non-acceptance, the **council** shall provide the **applicant** and the **accepting authority** with specific findings and reasons for its determination. The **accepting authority** shall abide by the **council's** decision.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-30 Supplemental environmental impact statements.

- (a) An **EIS** that is accepted with respect to a particular **action** is usually qualified by the size, scope, location, intensity, use, and timing of the **action**, among other things. An **EIS** that is accepted with respect to a particular **action** shall satisfy the requirements of this chapter and no **supplemental EIS** for that proposed **action** shall be required, to the extent that the **action** has not changed substantively in size, scope, intensity, use, location, or timing, among other things. If there is any change in any of these characteristics which may have a **significant effect**, the original **EIS** that was changed shall no longer be valid because an essentially different **action** would be under consideration and a **supplemental EIS** shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed **action** resulting in individual or **cumulative impacts** not originally disclosed, the **EIS** associated with that **action** shall be deemed to comply with this chapter.
- (b) The **accepting authority** or **approving agency** in coordination with the original **accepting authority** shall be responsible for determining whether a **supplemental EIS** is required. This determination will be submitted to the **office** for publication in the **periodic bulletin**. Proposing **agencies** or **applicants** shall prepare for public review **supplemental EISs** whenever the proposed **action** for which an **EIS** was accepted has been modified to the extent that new or different environmental **impacts** are anticipated. A **supplemental EIS** shall be warranted when the scope of an **action** has been substantially increased, when the intensity of environmental **impacts** will be increased, when the mitigating measures originally planned will not be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental **impacts** not previously dealt with.
- (c) The contents of the **supplemental EIS** shall be the same as required by this chapter for the **EIS** and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original **EIS**, including changes in ambient conditions or available information that have a bearing on a proposed

**action** or its **impacts**, the positive and negative aspects of these changes, and shall comply with the content requirements of subchapter 10 as they relate to the changes.

- (d) The requirements of the thirty-day consultation, public notice filing, distribution, the forty-five-day public review, comments and response, and **acceptance** procedures, shall be the same for the **supplemental EIS** as is prescribed by this chapter for an **EIS**.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

## Subchapter 11 National Environmental Policy Act

### §11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS.

When a certain **action** will be subject both to the **National Environmental Policy Act** of 1969 (**NEPA**), as amended (P.L. 91-190, 42 U.S.C. sections 4321-4347, as amended by P.L. 94-52, July 3, 1975, P.L. 94-83, Aug. 9, 1975, and P.L. 97-258 section 4(b), Sept. 13, 1982) and chapter 343, HRS, the following shall occur:

- (1) The **applicant** or **agency**, upon discovery of its proposed **action** being subject to both chapter 343, HRS, and the **NEPA**, shall notify the responsible federal entity, the **office**, and any **agency** with a definite interest in the **action** (as prescribed by chapter 343, HRS).
- (2) When a federal entity determines that the proposed **action** is exempt from review under the **NEPA**, this determination does not automatically constitute an exemption for the purposes of this chapter. In these cases, state and county **agencies** remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county **agency** determination.
- (3) When a federal entity issues a **FONSI** and concludes that an **EIS** is not required under the **NEPA**, this determination does not automatically constitute compliance with this chapter. In these cases, state and county **agencies** remain responsible for compliance with this chapter. However, the federal **FONSI** may be considered in the state or county **agency** determination.
- (4) The **NEPA** requires that **EISs** be prepared by the responsible federal entity. In the case of **actions** for which an **EIS** pursuant to the **NEPA** has been prepared by the responsible federal entity, the draft and final federal **EIS** may be submitted to comply with this chapter, so long as the federal **EIS** satisfies the **EIS** content requirements of this chapter, including cultural **impacts**, and is not found to be inadequate under the **NEPA**: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the **NEPA** regulations; or by the administrator of the United States

Environmental Protection Agency under section 309 of the Clean Air Act, title 41 United States Code section 7609.

- (5) When the responsibility of preparing an **EIS** is delegated to a state or county **agency**, this chapter shall apply in addition to federal requirements under the **NEPA**. The **office** and state or county **agencies** shall cooperate with federal entities to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint **EISs** with concurrent public review and processing at both levels of government. Where federal law has **EIS** requirements in addition to but not in conflict with this chapter, the **office** and **agencies** shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.
- (6) Where the **NEPA** process requires earlier or more stringent public review, filing, and distribution than under this chapter, that **NEPA** process shall satisfy this chapter so that duplicative consultation or review does not occur. The responsible federal entity's **supplemental EIS** requirements shall apply in these cases in place of this chapter's **supplemental EIS** requirements.
- (7) In all **actions** where the use of state land or funds is proposed, the **final EIS** shall be submitted to the governor or an authorized representative. In all **actions** when the use of county land or funds is proposed and no use of state land or funds is proposed, the **final EIS** shall be submitted to the mayor, or the authorized representative. The **final EIS** in these instances shall first be accepted by the governor or mayor (or the authorized representative), prior to the submission of the same to the responsible federal entity.
- (8) Any **acceptance** obtained pursuant to this section shall satisfy chapter 343, HRS, and no other **EIS** for the proposed **action** shall be required.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

## Subchapter 12 Retroactivity and Severability

### §11-200.1-32 Retroactivity.

- (a) This chapter shall apply immediately upon taking **effect**, except as otherwise provided below.
- (b) Chapter 11-200 shall continue to apply to environmental review of **agency** and **applicant actions** which began prior to the adoption of chapter 11-200.1, provided that:
  - (1) For **EAs**, if the **draft EA** was published by the **office** prior to the adoption of this chapter and has not received a determination within a period of five years from the implementation of this chapter, then the **proposing agency** or **applicant** must comply



with the requirements of this chapter. All subsequent environmental review, including an **EISPN** must comply with this chapter.

- (2) For **EISs**, if the **EISPN** was published by the **office** prior to the adoption of this chapter and the **final EIS** has not been accepted within five years from the implementation of this chapter, then the **proposing agency** or **applicant** must comply with the requirements of this chapter.
  - (3) A judicial proceeding pursuant to section 343-7, HRS, shall not count towards the five-year time period.
- (c) **Exemption lists** that have received concurrence under chapter 11-200 may be used for a period of seven years after the adoption of this chapter, during which time the **agency** must revise its list and obtain concurrence from the **council** in conformance with this chapter.

[Eff 8/9/19] (Auth: HRS §343-6) (Imp: HRS §343-6)

#### §11-200.1-33 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given **effect** without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.

[Eff 8/9/19] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-6, 343-8)

*(This page intentionally left blank.)*

## PART 2: RELATED SESSION LAWS, STATUTES, AND RULES

Act 50, SLH 2000, A Bill for an Act Relating to Environmental Impact Statements .....	61
Act 193, SLH 2016, A Bill for an Act Relating to Broadband.....	63
Act 48, SLH 2017, A Bill for an Act Relating to Transportation.....	65
Act 17, SLH 2018, A Bill for an Act Relating to Environmental Protection .....	67
HRS Chapter 105A, Plant and Non-Domestic Animal Quarantine and Microorganism Import.	68
HRS Chapter 183B, Hawaiian Fishponds.....	69
HRS Chapter 205, Land Use Commission.....	71
HRS Chapter 205A, Coastal Zone Management .....	85
HRS Chapter 304A, University of Hawaii System.....	86
HRS Chapter 334, Mental Health, Mental Illness, Drug Addiction, and Alcoholism.....	87
HRS Chapter 341, Environmental Quality Control .....	88
HRS Chapter 344, State Environmental Policy .....	92
HRS Chapter 353, Corrections .....	97
HRS Chapter 501, Land Court Registration .....	98
HRS Chapter 604A, Environmental Courts .....	99
HRS Chapter 669, Quieting Title.....	101
HAR Chapter 11-201, Environmental Council Rules of Practice and Procedure .....	105

## ACT 50, SLH 2000, A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Bill Number 2895

[https://www.capitol.hawaii.gov/slh/Years/SLH2000/SLH2000\\_Act50.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH2000/SLH2000_Act50.pdf)

Be It Enacted by the Legislature of the State of Hawaii:

### SECTION 1.

The legislature finds that there is a need to clarify that the preparation of environmental assessments or environmental impact statements should identify and address effects on Hawaii's culture, and traditional and customary rights. The legislature also finds that native Hawaiian culture plays a vital role in preserving and advancing the unique quality of life and the "aloha spirit" in Hawaii. Articles IX and XII of the state constitution, other state laws, and the courts of the State impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians as well as other ethnic groups.

Moreover, the past failure to require native Hawaiian cultural impact assessments has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture. The legislature further finds that due consideration of the effects of human activities on native Hawaiian culture and the exercise thereof is necessary to ensure the continued existence, development, and exercise of native Hawaiian culture.

The purpose of this Act is to:

- (1) Require that environmental impact statements include the disclosure of the effects of a proposed action on the cultural practices of the community and State; and
- (2) Amend the definition of "significant effect" to include adverse effects on cultural practices.

### SECTION 2.

Section 343-2, Hawaii Revised Statutes, is amended by amending the definitions of "environmental impact statement" or "statement" and "significant effect", to read as follows:

"Environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"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 [or] welfare, social welfare[.], or cultural practices of the community and State."

SECTION 3.

Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4.

This Act shall take effect upon its approval.

(Approved April 26, 2000.)

## ACT 193, SLH 2016, A BILL FOR AN ACT RELATING TO BROADBAND

House Bill Number 2543

[https://www.capitol.hawaii.gov/slh/Years/SLH2016/SLH2016\\_Act193.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH2016/SLH2016_Act193.pdf)

Be It Enacted by the Legislature of the State of Hawaii:

### SECTION 1.

Act 151, Session Laws of Hawaii 2011, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, is amended by amending section 2 to read as follows:

### "SECTION 2.

[From] Beginning January 1, 2012, [~~to January 1, 2017,~~] actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:

- (1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:
  - (A) On existing or replacement utility poles and conduits; and
  - (B) Using existing infrastructure and facilities;
- (2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and
- (3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.

An applicant shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.

A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of

the existing rights-of-way, utility easements, or telecommunications infrastructure."

SECTION 2.

Act 264, Session Laws of Hawaii 2013, is amended by amending section 5 to read as follows:

"SECTION 5.

This Act shall take effect on January 1, 2014~~[, and shall be repealed on July 30, 2018]~~; provided that this Act shall apply to permit applications filed with the State or county after December 31, 2013."

SECTION 3.

Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4.

This Act shall take effect on July 1, 2016.

(Approved July I, 2016.)

## ACT 48, SLH 2017, A BILL FOR AN ACT RELATING TO TRANSPORTATION

Senate Bill Number 1016

[https://www.capitol.hawaii.gov/slh/Years/SLH2017/SLH2017\\_Act48.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH2017/SLH2017_Act48.pdf)

Be It Enacted by the Legislature of the State of Hawaii:

### SECTION 1.

Act 218, Session Laws of Hawaii 2012, is amended by amending section 2 to read as follows:

#### "SECTION 2.

Beginning July 1, 2012, and ending June 30, [2017] 2022, the department of transportation and any of its contractors shall be exempt from state requirements under the following, but only to the extent necessary to expedite the projects enumerated under section 3 of this Act: 150

- (1) Chapter 6E, Hawaii Revised Statutes, historic preservation;
- (2) Part II of chapter 171, Hawaii Revised Statutes, public lands;
- (3) Chapter 174C, Hawaii Revised Statutes, state water code;
- (4) Chapter 180, Hawaii Revised Statutes, soil and water conservation districts;
- (5) Chapter 180C, Hawaii Revised Statutes, soil erosion and sediment control;
- (6) Chapter 183, Hawaii Revised Statutes, forest reserves, water development, and zoning;
- (7) Chapter 183D, Hawaii Revised Statutes, wildlife;
- (8) Chapter 184, Hawaii Revised Statutes, state parks and recreation areas;
- (9) Chapter 195, Hawaii Revised Statutes, natural area reserves system;
- (10) Chapter 195D, Hawaii Revised Statutes, conservation of aquatic life, wildlife, and land plants;
- (11) Chapter 198D, Hawaii Revised Statutes, Hawaii statewide trail and access system;
- (12) Chapter 205, Hawaii Revised Statutes, land use commission;
- (13) Chapter 205A, Hawaii Revised Statutes, coastal zone management;
- (14) Chapter 341, Hawaii Revised Statutes, environmental quality control;
- (15) Chapter 342B, Hawaii Revised Statutes, air pollution;



- (16) Chapter 342D, Hawaii Revised Statutes, water pollution;
- (17) Chapter 342E, Hawaii Revised Statutes, nonpoint source pollution management and control;
- (18) Chapter 342F, Hawaii Revised Statutes, noise pollution;
- (19) Chapter 343, Hawaii Revised Statutes, environmental impact statements; and
- (20) Chapter 344, Hawaii Revised Statutes, state environmental policy."

SECTION 2.

Act 218, Session Laws of Hawaii 2012, is amended by amending section 4 to read as follows:

"SECTION 4.

If the construction of a project granted an exemption under this Act is not completed by June 30, [~~2017~~] 2022, the governor may authorize in writing before that date the continuation of construction of the project until completion. If so authorized, the project shall continue to be exempt as provided under this Act."

SECTION 3.

Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4.

This Act shall take effect on June 29, 2017.

(Approved June 20, 2017.)

## ACT 17, SLH 2018, A BILL FOR AN ACT RELATING TO ENVIRONMENTAL PROTECTION

House Bill Number 2106

[https://www.capitol.hawaii.gov/slh/Years/SLH2000/SLH2000\\_Act50.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH2000/SLH2000_Act50.pdf)

Be It Enacted by the Legislature of the State of Hawaii:

### SECTION 1.

The environmental council shall adopt and maintain rules pursuant to chapter 91, Hawaii Revised Statutes, requiring all environmental assessments and environmental impact statements prepared pursuant to chapter 343, Hawaii Revised Statutes, whether in draft or final form, to include consideration of sea level rise based upon the best available scientific data regarding sea level rise.

### SECTION 2.

This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

### SECTION 3.

This Act shall take effect upon its approval.

(Approved June 4, 2018.)

## HRS CHAPTER 105A, PLANT AND NON-DOMESTIC ANIMAL QUARANTINE AND MICROORGANISM IMPORT

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0150A/HRS\\_0150A-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0150A/HRS_0150A-.htm)

### Section

§105A-10 Advisory committee on plants and animals. .... 68

### §105A-10 Advisory committee on plants and animals.

There shall be an advisory committee on plants and animals composed of the chairperson of the board or the chairperson's representative who shall be chairperson of the committee, the chairperson of the board of land and natural resources, the director of the office of environmental quality control, the director of department of health or their designees, and five other members, with expertise in plants, animals, or microorganisms, and who, by virtue of their vocation or avocation, also are thoroughly conversant with modern ecological principles and the variety of problems involved in the adequate protection of our natural resources. The latter five members shall be chosen by the chairperson. The committee shall advise and assist the department in developing or revising laws and regulations to carry out and effectuate the purposes of this chapter and in advising the department in problems relating to the introduction, confinement, or release of plants, animals, and microorganisms.

The chairperson may create ad hoc or permanent subcommittees, as needed.

[L 1973, c 69, pt of §1; gen ch 1985; am L 1990, c 243, §6; gen ch 1993]

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0150A/HRS\\_0150A-0010.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0150A/HRS_0150A-0010.htm)

## HRS CHAPTER 183B, HAWAIIAN FISHPONDS

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0183B/HRS\\_0183B-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0183B/HRS_0183B-.htm)

### Sections

§183B-1	Definitions. ....	69
§183B-2	Exemption from environmental impact statement law.....	69
§183B-3	Department assistance.....	70

### Note

L2014, C 218, §8 purports to amend this chapter.

### Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

### §183B-1 Definitions.

As used in this chapter:

**"Hawaiian fishponds"** means the unique, traditional system and methodology of aquaculture practiced by the aboriginal people of Hawaii, and found nowhere else in the world. Generally referred to as "loko i'a", the system mastered by ancient Hawaiians includes but is not limited to loko kuapa, loko umeiki, and loko pu'uone. Loko i'a are natural or artificial enclosures; loko kuapa are enclosures built upon a reef, loko umeiki are a type of permanent fish-trap structure, and loko pu'uone are enclosed by sand. The term does not include any fishpond designed in a manner or constructed for purposes other than those associated with traditional loko i'a management and culture.

[L 1995, c 177, pt of §2] [L 1970, c 132, pt of §1]

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0183B/HRS\\_0183B-0001.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0183B/HRS_0183B-0001.htm)

### §183B-2 Exemption from environmental impact statement law.

The proposed reconstruction, restoration, repair, or use of any **Hawaiian fishpond** shall be exempt from the requirements of chapter 343; provided that it will comply with the following conditions:

- (1) The **fishpond** is not adjacent to a sandy beach;
- (2) The **fishpond** stocks only native aquatic organisms;
- (3) The **fishpond** does not operate as an intensive culture system in which cultured organisms require frequent or periodic artificial feeding, artificial aeration of water, or artificial pumping of water through the **fishponds** for their growth and survival;
- (4) Bulk chemicals are not added to the water for the control of pathogens or parasites;

- (5) Coastal access is allowed to any person mauka of the **fishpond** and makai of walls;
- (6) The **fishpond** and its operations do not harm any threatened or endangered species; and
- (7) The **fishpond** is not used for water recreational purposes except those recreational activities customarily and traditionally practiced in **Hawaiian fishponds** prior to 1778.

[L 1995, c 177, pt of §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0183B/HRS\\_0183B-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0183B/HRS_0183B-0002.htm)

§183B-3 Department assistance.

The department of land and natural resources shall actively assist applicants applying for permits, certifications, and approvals to reconstruct, restore, repair, and use Hawaiian fishponds. The program shall assist applicants in sending permit applications to all affected agencies.

[L 1995, c 177, pt of §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0183B/HRS\\_0183B-0003.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0183B/HRS_0183B-0003.htm)

## HRS CHAPTER 205, LAND USE COMMISSION

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205/HRS\\_0205-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-.htm)

Section		
§205-2	Districting and classification of boundaries .....	71
§205-4.5	Permissible uses within the agricultural districts.....	75
§205-5	Zoning.....	83

### §205-2 Districting and classification of boundaries

- (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:
- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
  - (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
  - (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
  - (4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

- (b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

- (c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, and construction and operation of wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses.

- (d) Agricultural districts shall include:
- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
  - (2) Farming activities or uses related to animal husbandry and game and fish propagation;
  - (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
  - (4) Wind-generated energy production for public, private, and commercial use;
  - (5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;
  - (6) Solar energy facilities; provided that:
    - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
    - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;
  - (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property

and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

- (8) Wind machines and wind farms;
- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;
- (13) Open area recreational facilities;
- (14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;
- (15) Agricultural-based commercial operations registered in Hawaii, including:
  - (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;



- (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;
- (C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
- (D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and
- (E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph; and

- (16) Hydroelectric facilities as described in section 205-4.5(a)(23).

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

- (e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1.

[L 1963, c 205, pt of §2; Supp, §98H-2; HRS §205-2; am L 1969, c 182, §5; am L 1975, c 193, §3; am L 1977, c 140, §1 and c 163, §1; am L 1980, c 24, §2; am L 1985, c 298, §2; am L 1987, c 82, §3; am L 1989, c 5, §2; am L 1991, c 191, §1 and c 281, §2; am L 1995, c 69, §8; am L 2005, c 205, §2; am L 2006, c 237, §3 and c 250, §1; am L 2007, c 159, §2; am L 2008, c 31, §2 and c 145, §2; am L 2011, c 217, §2; am L 2012, c 97, §6, c 113, §2, c 167, §1, and c 329, §3; am L 2014, c 55, §2; am L 2015, c 228, §2; am L 2016, c 173, §2; am L 2017, c 12, §15 and c 129, §2; am L 2018, c 49, §3]

*Note*

The 2018 amendment applies to permit applications filed with the State or county after December 31, 2018. L 2018, c 49, §6(2).

*Cross References*

Districts, generally, see chapter 4.

*Attorney General Opinions*

Uses within agricultural districts. Att. Gen. Op. 62-33, 62-38.

Dwellings permissible under this section are further defined by regulations established under §205-7. Att. Gen. Op. 75-8.

*Law Journals and Reviews*

Avoiding the Next Hokulia: The Debate over Hawaii's Agricultural Subdivisions. 27 UH L. Rev. 441 (2005).

*Case Notes*

Cited: 134 H. 187, 339 P.3d 685 (2014).

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205/HRS\\_0205-0002.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0002.htm)

**§205-4.5 Permissible uses within the agricultural districts.**

- (a) [Repeal and reenactment on June 30, 2019. L 2014, c 52, §3(1).] Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:
- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
  - (2) Game and fish propagation;
  - (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
  - (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks

developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Agricultural-based commercial operations as described in section 205-2(d)(15);
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
  - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
  - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
  - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;
- (15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility

shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (18) Construction and operation of wireless communication antennas, including small wireless facilities; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that "small wireless facilities" shall have the same meaning as in section 206N-2; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;
- (19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this paragraph, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2;
- (20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on

lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

- (A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;
  - (B) Placed in a manner that still allows vehicular traffic to use the road; and
  - (C) Granted a special use permit by the commission pursuant to section 205-6;
- (21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:
- (A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;
  - (B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and
  - (C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:
    - (i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and
    - (ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.
- For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);
- (22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or
  - (23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

- (A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:
    - (i) Impoundment facilities using a dam to store water in a reservoir;
    - (ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and
    - (iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower elevation to be released to turn a turbine to generate electricity;
  - (B) Comply with the state water code, chapter 174C;
  - (C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and
  - (D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered.
- (b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall, insofar as such mortgage financing is jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional

waiver shall become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

- (c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).
- (d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district.
- (e) Notwithstanding any other provision of this chapter to the contrary, plantation community subdivisions as defined in this section shall be permitted uses within the agricultural district, and section 205-8 shall not apply.
- [(f)] Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:
  - (1) The principal use of the leased land is agriculture;
  - (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
  - (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
    - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
    - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards.

[L 1976, c 199, §1; am L 1977, c 136, §1; am L 1980, c 24, §3; am L 1982, c 217, §1; am L 1991, c 281, §3; am L 1997, c 258, §11; am L 2005, c 205, §3; am L 2006, c 237, §4, c 250, §2, and c 271, §1; am L 2007, c 159, §3 and c 171, §1; am L 2008, c



145, §3; am L 2009, c 53, §1; am L 2011, c 217, §3; am L 2012, c 97, §7, c 113, §3, c 167, §2, and c 329, §4; am L 2014, c 52, §1 and c 55, §3; am L 2015, c 228, §3; am L 2016, c 173, §3; am L 2017, c 12, §1; am L 2018, c 49, §4]

*Note*

Any solar energy facility permitted under L 2014, c 52 as of June 30, 2019, shall continue to be permissible under the provisions of c 52 until the end of its operable life. L 2014, c 52, §3(2).

The 2018, c 49 amendment is exempt from the repeal and reenactment condition of L 2014, c 52, §3. L 2018, c 49, §6(1).

The 2018 amendment applies to permit applications filed with the State or county after December 31, 2018. L 2018, c 49, §6(2).

The following acts exempted their amendments from the June 30, 2019 repeal and reenactment condition of L 2014, c 52, §3(1):

L 2014, c 55. L 2014, c 55, §5, as amended by L 2016, c 55, §52.

L 2015, c 228. L 2015, c 228, §5.

L 2016, c 173. L 2016, c 173, §5, as amended by L 2017, c 12, §79.

*Law Journals and Reviews*

Avoiding the Next Hokulia: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441 (2005).

*Case Notes*

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), assuming it was constitutional, did not facially invalidate Hawaii's land use law, where plaintiffs challenged this section and §205-6 to the extent the sections required a religious organization to obtain a special use permit, as violations of the "equal terms" and "nondiscrimination" provisions of the RLUIPA. 229 F. Supp. 2d 1056 (2002).

"Communications equipment buildings" and "utility lines" in subsection (a)(7) do not encompass "telecommunications antennas" or "transmission antennas" such as a cellular telephone tower; public utility thus had to apply for a special permit under §205-6 to place the tower in a state agricultural district. 90 H. 384, 978 P.2d 822 (1999).

Under subsection (a)(4) and (10), a chimney and garage are permitted as accessories to a farm dwelling; however, utilizing the chimney to conceal an antenna and the garage to house communication equipment were not permitted uses under either subsection (a)(4) or (10). 106 H. 343, 104 P.3d 930 (2005).

Under the circumstances of the case, the residence and the chimney with the concealed antenna constituted a "communications equipment building" and, thus, were permitted uses under subsection (a)(7); also, as the garage was not abnormally large and was designed specifically to store the communications equipment for the concealed antenna, utilizing the permitted garage structure to house the communications equipment for the antenna was a permitted use under subsection (a)(7). 106 H. 343, 104 P.3d 930 (2005).

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205/HRS\\_0205-0004\\_0005.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0004_0005.htm)

§205-5 Zoning.

- (a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.
- (b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2. Ordinances shall include but not be limited to:
  - (1) Requirements for access to a farm, including road width, road surface, and parking;
  - (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants;
  - (3) Activities that may be offered by the farming operation for visitors;
  - (4) Days and hours of operation; and
  - (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.

- (c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:
- (1) Low density residential uses;
  - (2) Agricultural uses;
  - (3) Golf courses, golf driving ranges, and golf-related facilities;
  - (4) Public, quasi-public, and public utility facilities; and
  - (5) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.

[L 1963, c 205, pt of §2; Supp, §98H-5; HRS §205-5; am L 1969, c 232, §1; am L 1977, c 140, §2; am L 1978, c 165, §1; am L 1991, c 281, §4; am L 1994, c 270, §2; am L 2005, c 205, §4; am L 2006, c 237, §5 and c 250, §3; am L 2012, c 97, §8 and c 329, §5]

*Attorney General Opinions*

Minimum lot size in agricultural districts. Att. Gen. Op. 62-33.

Cited in opinion that enforcement of land uses in conservation districts lies with department of land and natural resources, and not with counties. Att. Gen. Op. 70-22.

*Law Journals and Reviews*

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai`i's Agricultural District. 25 UH L. Rev. 199 (2002).

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205/HRS\\_0205-0005.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205/HRS_0205-0005.htm)

## HRS CHAPTER 205A, COASTAL ZONE MANAGEMENT

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205A/HRS\\_0205A-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205A/HRS_0205A-.htm)

Section		
§205A-41	Definitions. ....	85

### §205A-41 Definitions.

As used in this part, unless the context otherwise requires:

"Board approval" means approval by the board of land and natural resources pursuant to chapter 183C.

"Shoreline area" shall include all of the land area between the shoreline and the shoreline setback line and may include the area between mean sea level and the shoreline; provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" shall include the entire structure.

"Shoreline setback line" means that line established in this part or by the county running inland from the shoreline at a horizontal plane.

"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

[L 1986, c 258, pt of §1; am L 1989, c 356, §§2, 10; am L 1993, c 258, §5; am L 1995, c 11, §12 and c 69, §12]

[http://www.capitol.hawaii.gov/hrscurrent/Vol04\\_Ch0201-0257/HRS0205A/HRS\\_0205A-0041.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0205A/HRS_0205A-0041.htm)

## HRS CHAPTER 304A, UNIVERSITY OF HAWAII SYSTEM

[https://www.capitol.hawaii.gov/hrscurrent/Vol05\\_Ch0261-0319/HRS0304A/HRS\\_0304A-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0304A/HRS_0304A-.htm)

### Section

§304A-1551 Environmental center; structure and functions. .... 86

#### §304A-1551 Environmental center; structure and functions.

- (a) There is created within the university an environmental center. The center shall assist the director of environmental quality control as provided for under section 341-4.
- (b) The center shall be so constituted as to make most effective the contribution of the university to the problems of determining and maintaining optimum environmental quality. Its membership shall be comprised of those members of the university community actively concerned with ecological and environmental problems.
- (c) The functions of the center shall be to stimulate, expand, and coordinate education, research, and service efforts of the university related to ecological relationships, natural resources, and environmental quality, with special relation to human needs and social institutions, particularly with regard to the State.

[L 2006, c 75, pt of §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol05\\_Ch0261-0319/HRS0304A/HRS\\_0304A-1551.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0304A/HRS_0304A-1551.htm)

## HRS CHAPTER 334, MENTAL HEALTH, MENTAL ILLNESS, DRUG ADDICTION, AND ALCOHOLISM

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0334/HRS\\_0334-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0334/HRS_0334-.htm)

### Section

§334-2.7 Development or expansion of a forensic facility of the department of health. .... 87

§334-2.7 Development or expansion of a forensic facility of the department of health.

- (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of a **forensic facility** of the department; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion of the **forensic facility** under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.
- (b) Any development or expansion proposal shall address the construction of the **forensic facility** separate from the operation of the **facility** and shall consider and include:
  - (1) The percentages of low, medium, and high risk patients;
  - (2) The impact of the **facility** on existing infrastructure and an assessment of improvements and additions that will be necessary;
  - (3) The impact of the **facility** on available modes of transportation, including airports, roads, and highways; and
  - (4) A **useful life costs** analysis.
- (c) For the purposes of this section:
  - "**Forensic facility**" means a facility that assesses and treats forensically committed persons.
  - "**Useful life costs**" means an economic evaluation that compares alternate building and operating methods and provides information on the design, construction methods, and materials to be used with respect to efficiency in building maintenance and facility operation.

[L 2016, c 90, §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0334/HRS\\_0334-0002\\_0007.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0334/HRS_0334-0002_0007.htm)

## HRS CHAPTER 341, ENVIRONMENTAL QUALITY CONTROL

[http://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-.htm)

### Sections

§341-1	Findings and purpose. ....	88
§341-2	Definitions. ....	88
§341-3	Office of environmental quality control; environmental center; environmental council. ....	89
§341-4	Powers and duties of the director. ....	90
§341-5	REPEALED. ....	90
§341-6	Functions of the environmental council. ....	91

### Note

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2022, or until completion. L 2012, c 218; L 2017, c 48.

### §341-1 Findings and purpose.

The legislature finds that the quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an optimum balance between economic development and environmental quality deserves the most thoughtful consideration, and that the maintenance of the optimum quality of the environment deserves the most intensive care.

The purpose of this chapter is to stimulate, expand and coordinate efforts to determine and maintain the optimum quality of the environment of the State.

[L 1970, c 132, pt of §1]

[http://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-0001.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0001.htm)

### §341-2 Definitions.

As used in this chapter, unless the context otherwise requires:

"**Center**" means the University of Hawaii environmental center established in section [304A-1551].

"**Council**" means the environmental council established in section 341-3(c).

"**Director**" means the director of environmental quality control.

"**Office**" means the office of environmental quality control established in section 341-3(a).

"**University**" means the University of Hawaii.

[L 1970, c 132, pt of §1; am L 2006, c 75, §12]

*Revision Note*

In definition of "center", "environmental center" substituted for "ecology or environmental center".

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0002.htm)

§341-3 Office of environmental quality control; environmental center; environmental council.

- (a) There is created an **office** of environmental quality control that shall be headed by a single executive to be known as the **director** of environmental quality control who shall be appointed by the governor as provided in section 26-34. This **office** shall implement this chapter and shall be placed within the department of health for administrative purposes. The **office** shall perform its duties under chapter 343 and shall serve the governor in an advisory capacity on all matters relating to environmental quality control.
- (b) The environmental **center** within the **University** of Hawaii shall be as established under section [304A-1551].
- (c) There is created an environmental **council** not to exceed fifteen members. Except for the **director**, members of the environmental **council** shall be appointed by the governor as provided in section 26-34. The **council** shall be attached to the department of health for administrative purposes. Except for the **director**, the term of each member shall be four years; provided that, of the members initially appointed, five members shall serve for four years, five members shall serve for three years, and the remaining four members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. The **director** shall be an ex officio voting member of the **council**. The **council** chairperson shall be elected by the **council** from among the appointed members of the **council**.

Members shall be appointed to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups. The members of the **council** shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the discharge of their duties.

[L 1970, c 132, pt of §1; am L 1980, c 302, pt of §2; am L 1983, c 140, §1; am L 1987, c 233, §1; am L 2006, c 75, §13]

*Law Journals and Reviews*

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-0003.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0003.htm)



§341-4 Powers and duties of the director.

- (a) The **director** shall have such powers delegated by the governor as are necessary to coordinate and, when requested by the governor, to direct pursuant to chapter 91 all state governmental agencies in matters concerning environmental quality.
- (b) To further the objective of subsection (a), the **director** shall:
  - (1) Direct the attention of the **university** community and the residents of the State in general to ecological and environmental problems through the **center** and the **council**, respectively, and through public education programs;
  - (2) Conduct research or arrange for the conduct of research through contractual relations with the **center**, state agencies, or other persons with competence in the field of ecology and environmental quality;
  - (3) Encourage public acceptance of proposed legislative and administrative actions concerning ecology and environmental quality, and receive notice of any private or public complaints concerning ecology and environmental quality through the council;
  - (4) Recommend programs for long-range implementation of environmental quality control;
  - (5) Submit direct to the governor and to the legislature such legislative bills and administrative policies, objectives, and actions, as are necessary to preserve and enhance the environmental quality of the State;
  - (6) Conduct public educational programs; and
  - (7) Offer advice and assistance to private industry, governmental agencies, or other persons upon request.
- (c) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of implementing this chapter.

[L 1970, c 132, pt of §1; am L 1978, c 161, §1; am L 1985, c 127, §3; am L 1987, c 185, §1; am L 2001, c 247, §1]

[https://www.capitol.hawaii.gov/hrscurrent/Volo06\\_Ch0321-0344/HRS0341/HRS\\_0341-0004.htm](https://www.capitol.hawaii.gov/hrscurrent/Volo06_Ch0321-0344/HRS0341/HRS_0341-0004.htm)

§341-5 REPEALED.

L 2006, c 75, §17.

*Cross References*

For present provision, see [§304A-1551](#).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-0005.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0005.htm)

§341-6 Functions of the environmental council.

The **council** shall serve as a liaison between the **director** and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the **director** pursuant to section 341-4(b)(3). The **council** may make recommendations concerning ecology and environmental quality to the **director** and shall meet at the call of the **council** chairperson or the **director** upon notifying the **council** chairperson. The **council** shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and with the assistance of the **director** shall make an annual report with recommendations for improvement to the governor, the legislature, and the public no later than January 31 of each year. All state and county agencies shall cooperate with the **council** and assist in the preparation of such a report by responding to requests for information made by the **council**. The **council** may delegate to any person such power or authority vested in the **council** as it deems reasonable and proper for the effective administration of this section and chapter 343, except the power to make, amend, or repeal rules.

[L 1970, c 132, pt of §1; am L 1974, c 248, §1; am L 1983, c 140, §2]

*Revision Note*

Section "341-4(b)(3)" substituted for "341-4(b)(4)".

*Law Journals and Reviews*

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0341/HRS\\_0341-0006.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0006.htm)

## HRS CHAPTER 344, STATE ENVIRONMENTAL POLICY

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0344/HRS\\_0344-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-.htm)

### Sections

§344-1	Purpose. ....	92
§344-2	Definitions. ....	92
§344-3	Environmental policy.....	93
§344-4	Guidelines. ....	93

### Note

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2022, or until completion. L 2012, c 218; L 2017, c 48.

### Cross References

Development of environmental goals and objectives by department of health, see §321-1.1.

### Law Journals and Reviews

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

### §344-1 Purpose.

The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between people and their **environment**, promote efforts which will prevent or eliminate damage to the **environment** and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii.

[L 1974, c 247, pt of §1; gen ch 1993]

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0344/HRS\\_0344-0001.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0001.htm)

### §344-2 Definitions.

As used in this chapter unless the context otherwise requires:

"**Agency**" means any department, office, board, or commission of the State or county government that is a part of the executive branch of that government.

"**Environment**" means the complex of physical and biological conditions that influence human well-being, including land, air, water, minerals, flora, fauna, energy, noise, and places of historic or aesthetic significance.

[L 1974, c 247, pt of §1]

*Revision Note*

Numeric designations deleted.

[https://www.capitol.hawaii.gov/hrscurrent/Volo6\\_Ch0321-0344/HRS0344/HRS\\_0344-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Volo6_Ch0321-0344/HRS0344/HRS_0344-0002.htm)

**§344-3 Environmental policy.**

It shall be the policy of the State, through its programs, authorities, and resources to:

- (1) Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State's unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawaii.
- (2) Enhance the quality of life by:
  - (A) Setting population limits so that the interaction between the natural and artificial **environments** and the population is mutually beneficial;
  - (B) Creating opportunities for the residents of Hawaii to improve their quality of life through diverse economic activities which are stable and in balance with the physical and social **environments**;
  - (C) Establishing communities which provide a sense of identity, wise use of land, efficient transportation, and aesthetic and social satisfaction in harmony with the natural **environment** which is uniquely Hawaiian; and
  - (D) Establishing a commitment on the part of each person to protect and enhance Hawaii's **environment** and reduce the drain on nonrenewable resources.

[L 1974, c 247, pt of §1; gen ch 1993]

*Case Notes*

Cited: 134 H. 86 (App.), 332 P.3d 688 (2014).

[https://www.capitol.hawaii.gov/hrscurrent/Volo6\\_Ch0321-0344/HRS0344/HRS\\_0344-0003.htm](https://www.capitol.hawaii.gov/hrscurrent/Volo6_Ch0321-0344/HRS0344/HRS_0344-0003.htm)

**§344-4 Guidelines.**

In pursuance of the state policy to conserve the natural resources and enhance the quality of life, all agencies, in the development of programs, shall, insofar as practicable, consider the following guidelines:

- (1) Population.

- (A) Recognize population impact as a major factor in environmental degradation and adopt guidelines to alleviate this impact and minimize future degradation;
  - (B) Recognize optimum population levels for counties and districts within the State, keeping in mind that these will change with technology and circumstance, and adopt guidelines to limit population to the levels determined.
- (2) Land, water, mineral, visual, air, and other natural resources.
- (A) Encourage management practices which conserve and fully utilize all natural resources;
  - (B) Promote irrigation and waste water management practices which conserve and fully utilize vital water resources;
  - (C) Promote the recycling of waste water;
  - (D) Encourage management practices which conserve and protect watersheds and water sources, forest, and open space areas;
  - (E) Establish and maintain natural area preserves, wildlife preserves, forest reserves, marine preserves, and unique ecological preserves;
  - (F) Maintain an integrated system of state land use planning which coordinates the state and county general plans;
  - (G) Promote the optimal use of solid wastes through programs of waste prevention, energy resource recovery, and recycling so that all our wastes become utilized.
- (3) Flora and fauna.
- (A) Protect endangered species of indigenous plants and animals and introduce new plants or animals only upon assurance of negligible ecological hazard;
  - (B) Foster the planting of native as well as other trees, shrubs, and flowering plants compatible to the enhancement of our **environment**.
- (4) Parks, recreation, and open space.
- (A) Establish, preserve and maintain scenic, historic, cultural, park and recreation areas, including the shorelines, for public recreational, educational, and scientific uses;
  - (B) Protect the shorelines of the State from encroachment of artificial improvements, structures, and activities;
  - (C) Promote open space in view of its natural beauty not only as a natural resource but as an ennobling, living **environment** for its people.

- (5) Economic development.
  - (A) Encourage industries in Hawaii which would be in harmony with our **environment**;
  - (B) Promote and foster the agricultural industry of the State; and preserve and conserve productive agricultural lands;
  - (C) Encourage federal activities in Hawaii to protect the **environment**;
  - (D) Encourage all industries including the fishing, aquaculture, oceanography, recreation, and forest products industries to protect the **environment**;
  - (E) Establish visitor destination areas with planning controls which shall include but not be limited to the number of rooms;
  - (F) Promote and foster the aquaculture industry of the State; and preserve and conserve productive aquacultural lands.
- (6) Transportation.
  - (A) Encourage transportation systems in harmony with the lifestyle of the people and **environment** of the State;
  - (B) Adopt guidelines to alleviate environmental degradation caused by motor vehicles;
  - (C) Encourage public and private vehicles and transportation systems to conserve energy, reduce pollution emission, including noise, and provide safe and convenient accommodations for their users.
- (7) Energy.
  - (A) Encourage the efficient use of energy resources.
- (8) Community life and housing.
  - (A) Foster lifestyles compatible with the **environment**; preserve the variety of lifestyles traditional to Hawaii through the design and maintenance of neighborhoods which reflect the culture and mores of the community;
  - (B) Develop communities which provide a sense of identity and social satisfaction in harmony with the **environment** and provide internal opportunities for shopping, employment, education, and recreation;
  - (C) Encourage the reduction of environmental pollution which may degrade a community;
  - (D) Foster safe, sanitary, and decent homes;

- (E) Recognize community appearances as major economic and aesthetic assets of the counties and the State; encourage green belts, plantings, and landscape plans and designs in urban areas; and preserve and promote mountain-to-ocean vistas.
- (9) Education and culture.
  - (A) Foster culture and the arts and promote their linkage to the enhancement of the **environment**;
  - (B) Encourage both formal and informal environmental education to all age groups.
- (10) Citizen participation.
  - (A) Encourage all individuals in the State to adopt a moral ethic to respect the natural **environment**; to reduce waste and excessive consumption; and to fulfill the responsibility as trustees of the **environment** for the present and succeeding generations; and
  - (B) Provide for expanding citizen participation in the decision making process so it continually embraces more citizens and more issues. [L 1974, c 247, pt of §1; am L 1976, c 27, §2; am L 1985, c 76, §1; gen ch 1993]

*Case Notes*

No mandate to adopt guidelines prior to making decisions on programs. 63 H. 453, 629 P.2d 1134.

[https://www.capitol.hawaii.gov/hrscurrent/Vol06\\_Ch0321-0344/HRS0344/HRS\\_0344-0004.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0004.htm)

## HRS CHAPTER 353, CORRECTIONS

[https://www.capitol.hawaii.gov/hrscurrent/Vol07\\_Ch0346-0398/HRS0353/HRS\\_0353-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0353/HRS_0353-.htm)

### Section

§353-16.35 Development or expansion of in-state correctional facilities. .... 97

#### §353-16.35 Development or expansion of in-state correctional facilities.

- (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of private in-state correctional facilities or public in-state turnkey correctional facilities to reduce prison overcrowding; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion of an existing correctional facility under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.
- (b) Any development or expansion proposal shall address the construction of the facility separate from the operation of the facility and shall consider and include:
  - (1) The percentage of low, medium, and high security inmates and the number of prison beds needed to incarcerate each of the foregoing classes of inmates;
  - (2) The facility's impact on existing infrastructure, and an assessment of improvements and additions that will be necessary;
  - (3) The facility's impact on available modes of transportation, including airports, roads, and highways; and
  - (4) A **useful life costs** analysis.
- (c) For the purposes of this section, "**useful life costs**" means an economic evaluation that compares alternate building and operating methods and provides information on the design, construction methods, and materials to be used with respect to efficiency in building maintenance and facilities operation.

[L 1998, c 227, pt of §5; am L 2003, c 221, §1]

[https://www.capitol.hawaii.gov/hrscurrent/Vol07\\_Ch0346-0398/HRS0353/HRS\\_0353-0016\\_0035.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0353/HRS_0353-0016_0035.htm)



## HRS CHAPTER 501, LAND COURT REGISTRATION

[http://www.capitol.hawaii.gov/hrscurrent/Vol12\\_Ch0501-0588/HRS0501/HRS\\_0501-htm](http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0501/HRS_0501-htm)

Section		
§501-33	Accretion to land.....	98

### §501-33 Accretion to land.

- [(a)] An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent and that the land accreted before or on May 20, 2003; provided that:
- (1) The State may register land accreted along the ocean after May 20, 2003; and
  - (2) A private property owner whose eroded land has been restored by accretion after May 20, 2003, may file an accretion claim to regain title to the restored portion.
- [(b)] The applicant shall supply the office of environmental quality control with notice of the application, for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The application shall not be approved unless the office of environmental quality control has published notice in the office's periodic bulletin.
- [(c)] As used in this section, "permanent" means that the accretion has been in existence for at least twenty years. The accreted portion of the land shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45.

[L 1985, c 221, §2; am L 2003, c 73, §4; am L 2012, c 56, §2]

#### *Rules of Court*

Accretion, see RLC rule 26; maps, see RLC rule 105.

#### *Law Journals and Reviews*

The Wash of the Waves: How the Stroke of a Pen Recharacterized Accreted Lands as Public Property. 34 UH L. Rev. 525 (2012).

#### *Case Notes*

Cited: 73 H. 297, 832 P.2d 724 (1992).

[http://www.capitol.hawaii.gov/hrscurrent/Vol12\\_Ch0501-0588/HRS0501/HRS\\_0501-0033.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0501/HRS_0501-0033.htm)

## HRS CHAPTER 604A, ENVIRONMENTAL COURTS

[https://www.capitol.hawaii.gov/hrscurrent/Vol13\\_Ch0601-0676/HRS0604A/HRS\\_0604A-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol13_Ch0601-0676/HRS0604A/HRS_0604A-.htm)

### Sections

§604A-1	Environmental courts; establishment. ....	99
§604A-2	Jurisdiction. ....	99
§604A-3	Rules. ....	100

### §604A-1 Environmental courts; establishment.

- (a) The environmental courts shall be created as divisions of the circuit courts and district courts of the State and shall not be deemed to be other courts as that term is used in the state constitution. An environmental court shall be held at the courthouse in each circuit, or other duly designated place, by the judge or judges of the respective environmental courts.
- (b) The chief justice of the supreme court shall designate an environmental judge or judges for each circuit and for a district court in each circuit, as may be necessary; provided that if the volume of environmental cases in the circuit or district in which an environmental judge presides is not adequate to provide an environmental court judge with a full-time docket, the judge may hear cases arising from other areas of law. In any circuit that has more than one judge designated for the environmental court, the chief justice shall designate one of the judges as senior judge. The chief justice may temporarily assign an environmental court judge to preside in another circuit when the chief justice determines that the urgency of one or more cases in the circuit court or district court or the volume of the cases in the circuit court or district court so requires.

[L 2014, c 218, pt of §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol13\\_Ch0601-0676/HRS0604A/HRS\\_0604A-0001.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol13_Ch0601-0676/HRS0604A/HRS_0604A-0001.htm)

### §604A-2 Jurisdiction.

- (a) The environmental courts shall have exclusive, original jurisdiction over all proceedings, including judicial review of administrative proceedings and proceedings for declaratory judgment on the validity of agency rules authorized under chapter 91, arising under chapters 6D, 6E, 6K, 128D, 339, 339D, 340A, 340E, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P, 343, and 508C, and title 12; provided that:
  - (1) The environmental courts shall not have exclusive, original jurisdiction over any proceedings relating to any motor vehicle, motorcycle, motor scooter, or moped parking violations adopted under agency rules pursuant to chapter 91 and authorized under chapters 6D, 6E, 6K, 128D, 339, 339D, 340A, 340E, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P, 343, and 508C, and title 12; and

- (2) Upon the motion of a party or sua sponte by the chief justice, the chief justice may assign to the environmental courts issues before the courts when the chief justice determines that due to their subject matter the assignment is required to ensure the uniform application of environmental laws throughout the State or to otherwise effectuate the purpose of this chapter.
- (b) In any case in which it has jurisdiction, the environmental courts shall exercise general equity powers as authorized by law. Nothing in this chapter shall be construed to limit the jurisdiction and authority of any judge, designated as judge of an environmental court, to matters within the scope of this chapter.

[L 2014, c 218, pt of §2; am L 2018, c 119, §1]

[https://www.capitol.hawaii.gov/hrscurrent/Vol13\\_Ch0601-0676/HRS0604A/HRS\\_0604A-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol13_Ch0601-0676/HRS0604A/HRS_0604A-0002.htm)

§604A-3 Rules.

The supreme court shall adopt rules regarding the administration, operation, and procedures of the environmental courts.

[L 2014, c 218, pt of §2]

[https://www.capitol.hawaii.gov/hrscurrent/Vol13\\_Ch0601-0676/HRS0604A/HRS\\_0604A-0003.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol13_Ch0601-0676/HRS0604A/HRS_0604A-0003.htm)

## HRS CHAPTER 669, QUIETING TITLE

[http://www.capitol.hawaii.gov/hrscurrent/Vol13\\_Ch0601-0676/HRS0669/HRS\\_0669-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol13_Ch0601-0676/HRS0669/HRS_0669-.htm)

Section		
§669-1	Object of action. ....	101

### §669-1 Object of action.

- (a) Action may be brought by any person against another person who claims, or who may claim adversely to the plaintiff, an estate or interest in real property, for the purpose of determining the adverse claim.
- (b) Action for the purpose of establishing title to a parcel of real property of five acres or less may be brought by any person who has been in adverse possession of the real property for not less than twenty years. Action for the purpose of establishing title to a parcel of real property of greater than five acres may be brought by any person who had been in adverse possession of the real property for not less than twenty years prior to November 7, 1978, or for not less than earlier applicable time periods of adverse possession. For purposes of this section, any person claiming title by adverse possession shall show that such person acted in good faith. Good faith means that, under all the facts and circumstances, a reasonable person would believe that the person has an interest in title to the lands in question and such belief is based on inheritance, a written instrument of conveyance, or the judgment of a court of competent jurisdiction.
- (c) Action brought to claim property of five acres or less on the basis of adverse possession may be asserted in good faith by any person not more than once in twenty years, after November 7, 1978.
- (d) Action under subsection (a) or (b) shall be brought in the circuit court of the circuit in which the property is situated.
- (e) Action may be brought by any person to quiet title to land by accretion; provided that no action shall be brought by any person other than the State to quiet title to land accreted along the ocean after May 20, 2003, except that a private property owner whose eroded land has been restored by accretion may also bring such an action for the restored portion. The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent and that the land accreted before or on May 20, 2003. The person bringing the action shall supply the office of environmental quality control with notice of the action for publication in the office's periodic bulletin in compliance with section 343-3(c)(4). The quiet title action shall not be decided by the court unless the office of environmental quality control has properly published notice of the action in the office's periodic bulletin.

As used in this section, "permanent" means that the accretion has been in existence for at least twenty years. The accreted portion of land shall be considered within the conservation district. Land accreted after May 20,

2003, shall be public land except as otherwise provided in this section.  
Prohibited uses are governed by section 183-45.

[L 1890, c 18, §1; RL 1925, §2757; RL 1935, §4390; RL 1945, §10451; am L Sp 1949, c 46, §1(a); RL 1955, §242-1; am L 1959, c 52, §1; am L 1967, c 258, §1; HRS §669-1; am L 1972, c 90, §12(a); am L 1973, c 26, §2; am L 1979, c 157, §3; am L 1983, c 222, §1; am L 1985, c 221, §3; gen ch 1985; am L 2003, c 73, §5; am L 2012, c 56, §3]

*Cross References*

Constitutional provisions, see Const. art. XVI, §12.

Venue, see §603-36.

*Rules of Court*

Applicability of HRCP, see HRCP rule 81(b).

*Law Journals and Reviews*

Adverse Possession Against Unknown Claimants Under Land Court and Quiet Title Procedures. 2 HBJ, no. 2, at 4 (1964).

Adverse Possession and Quiet Title Actions in Hawaii -- Recent Constitutional Developments. 19 HBJ, no. 1, at 59 (1985).

Beach Access: A Public Right? 23 HBJ, no. 1, at 65 (1991).

Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495 (2008).

From Sea to Rising Sea: How Climate Change Challenges Coastal Land Use Laws. 33 UH L. Rev. 289 (2010).

The Wash of the Waves: How the Stroke of a Pen Recharacterized Accreted Lands as Public Property. 34 UH L. Rev. 525 (2012).

*Case Notes*

Downstream owners may acquire water rights by adverse use against upstream owner who has never used upstream owner's rights during prescriptive period. 441 F. Supp. 559 (1977).

Count of complaint did not allege the necessary elements of a quiet title cause of action, where plaintiffs cited no authority for their argument that defendant mortgage loan servicer's actions sending bills and demanding payment, constituted an estate or interest in real property, as necessary to state a claim under this section. 901 F. Supp. 2d 1253 (2012).

If plaintiff's theory was that defendant mortgage loan servicer wrongfully asserted a cloud on the title by threatening to foreclose when defendant's ownership interest had been terminated, plaintiffs' claim was barred by the tender rule; plaintiffs failed to allege that they paid off the note or were prepared to tender all amounts owing. 901 F. Supp. 2d 1253 (2012).

Moving defendants were entitled to judgment as a matter of law, where plaintiffs had not presented any evidence indicating that they were able to tender the outstanding amount on their loan. 911 F. Supp. 2d 916 (2012).

Par. (a): Statutory remedy under this chapter compared with equitable remedy. 46 H. 1, 373 P.2d 710 (1962).

Essentials of adverse possession in cases involving cotenants. 52 H. 537, 481 P.2d 109 (1971).

When evidence as to adverse possession is clear and undisputed, question becomes one of law. 55 H. 30, 514 P.2d 572 (1973).

Actual possession of part of a parcel of land, under a deed purporting to convey the whole of the parcel, is constructive adverse possession to all of the parcel not in possession of another. 57 H. 64, 549 P.2d 740 (1976).

Exclusivity of possession is essential to claim of adverse possession. 57 H. 172, 552 P.2d 77 (1976).

Burden is on plaintiff to prove title, and if plaintiff fails, not necessary for defendant to make any showing. 58 H. 106, 566 P.2d 725 (1977).

Payment of taxes is only one factor to be considered in the determination of adverse possession. 58 H. 362, 569 P.2d 352 (1972).

Though courts have not sanctioned use of section to quiet title to water per se, it may be used to quiet title to real property with appurtenant riparian water rights. 65 H. 641, 658 P.2d 287 (1982).

Claimants failed to establish prima facie case of hostile and exclusive possession for entire twenty-year period where evidence of actual notice to other claimants insufficient and time period of possession unclear. 86 H. 76, 947 P.2d 944 (1997).

Where claimant failed to rebut presumption that claimant's possession of property remained permissive by providing evidence that claimant or claimant's predecessor-in-interest converted possession from permissive to hostile, claimant failed to prove it was entitled to the fee simple interest in the property based on adverse possession. 90 H. 289, 978 P.2d 727 (1999).

Appeals court erred in determining that summary judgment was proper in quiet title action for subject property where, viewed in the light most favorable to defendants, there were genuine issues of material fact as to whether a cotenancy existed among plaintiff and defendants and, if a cotenancy did exist, whether plaintiff acted in good faith towards its cotenant. 114 H. 24, 155 P.3d 1125 (2007).

In a quiet title action, defendant cannot set up title in stranger to defeat claim. 1 H. App. 573, 623, P.2d 885 (1981).

Color of title is not indispensable to prove title by adverse possession if the other necessary elements are shown to exist and are not explained. 2 H. App. 1, 625 P.2d 378 (1981).

Possession of property to fence by occupier who believed the fence marked occupier's boundary line constituted adverse possession. 2 H. App. 234, 629 P.2d 1151 (1981).

Savings clause in 1973 amendment requires application of prior law's ten-year period of limitations in adverse possession case. 3 H. App. 11, 639 P.2d 1119 (1982).

Article XVI §12 of the Hawaii constitution does not bar adverse possession claims to more than five acres of land where claim matured prior to November 7, 1978; this section is a reasonable construction of article XVI, §12. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Claimant established prima facie case of adverse possession where claimants built, operated and leased slaughterhouse for over fifty years, erected signs designating property, and placed and maintained fences around property. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Publicly recorded conveyances evidencing the existence of a cotenancy in land may render a cotenant's belief that he or she had no reason to suspect the cotenancy's existence not objectively reasonable. 91 H. 545 (App.), 985 P.2d 1112 (1999).

Where earliest point at which plaintiffs' alleged prescriptive easement could have begun to accrue was 1986, the year plaintiff-wife purchased the fee on the property, plaintiffs failed to meet the twenty-year prescriptive period set forth in subsection (b). 97 H. 305 (App.), 37 P.3d 554 (1999).

Cited: 907 F. Supp. 2d 1165 (2012); 73 H. 297, 832 P.2d 724 (1992).

*Cases prior to adoption of the Hawaii Rules of Civil Procedure.*

An admitted valid interest need not be submitted to jury. 10 H. 507 (1896). Probate proceedings. 20 H. 653 (1911). Admissions by former pleadings. 22 H. 51 (1914). Defendant cannot defeat by claim of title in stranger. 22 H. 465 (1915). Prescription vs. lost grant. 25 H. 357, 365-370 (1920), aff'd 272 F. 856 (1921). Sufficiency of evidence jury waived. 29 H. 250 (1926). Pedigree. 32 H. 1 (1931).

Equitable remedy does not affect right to pursue this statutory remedy to quiet title. 10 H. 507 (1896). Equitable remedy available. 12 H. 12 (1899); 15 H. 308 (1903); 20 H. 638 (1911); 21 H. 196 (1912).

Statutory remedy is not limited to persons in possession. 10 H. 507 (1896); 14 H. 365 (1902). As to equitable remedy. See 9 H. 555 (1894); 18 H. 415 (1907); 22 H. 510 (1915). Mortgagee, after default, may bring action. 15 H. 52 (1903); 32 H. 323 (1932). One in possession claiming fee simple under will may maintain action against one who, under the same will, claims remainder in fee under certain contingencies. 22 H. 233 (1914). When plaintiff has failed to show title, whether defendants may litigate disputed title amongst themselves. 22 H. 644 (1915).

Judgment in statutory action. 11 H. 512 (1898). Judgment may include award of possession and be enforced by writ of possession. 14 H. 365, 368 (1902). Whether unexecuted judgment for possession stays statute of limitations. 14 H. 365 (1902). Incumbent on plaintiff to prove title; if plaintiff fails, it is unnecessary for defendant to make any showing; only possible judgment is dismissal. 22 H. 465, 466 (1915), aff'd 240 F. 97 (1917); 25 H. 246 (1919). Abatement, prior action of ejectment. 31 H. 71 (1929). See 37 H. 234 (1945).

Par. (b): Action based on adverse possession not in rem as to persons who can be found. 50 H. 201, 436 P.2d 752 (1968).

## HAR CHAPTER 11-201, ENVIRONMENTAL COUNCIL RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Purpose.....	106
§11-201-1 Purpose .....	106
Subchapter 2 Definition .....	106
§11-201-2 Definitions .....	106
Subchapter 3 Environmental Council.....	107
§11-201-3 Environmental Council.....	107
§11-201-4 Delegation of Administrative Duties .....	108
Subchapter 4 Public Records .....	109
§11-201-5 Public Records .....	109
Subchapter 5 Proceedings Before Council or Hearing Officer.....	109
§11-201-6 Proceedings Before Council or Hearing Officer.....	109
§11-201-7 Disqualification of Council Member or Hearing Officer .....	110
§11-201-8 Consolidations .....	111
§11-201-9 Filing of Documents.....	111
§11-201-10 Amendment of Documents and Dismissal .....	111
§11-201-11 Retention of Documents .....	112
§11-201-12 Service of Process.....	112
§11-201-13 Council Decision .....	112
§11-201-14 Computation of Time.....	112
§11-201-15 Continuance or Extensions of Time.....	113
Subchapter 6 Rulemaking.....	113
§11-201-16 Initiation of Rulemaking Proceedings .....	113
§11-201-17 Notice of Public Hearing.....	114
§11-201-18 Conduct of Hearing.....	114
§11-201-19 Council Action.....	115
§11-201-20 Emergency Rulemaking.....	115
Subchapter 7 Declaratory Rulings .....	116
§11-201-21 Petitions for Declaratory Rulings .....	116
§11-201-22 Refusal to Issue a Declaratory Order.....	116
§11-201-23 Request for Hearing.....	117
§11-201-24 Applicability of Order .....	117
§11-201-25 Declaratory Ruling on Council's Own Motion.....	117
Subchapter 8 Appeals .....	117



§11-201-26	Filing of Appeal.....	117
§11-201-27	Filing of Response to Appeal .....	118
§11-201-28	Appeal Hearings; Generally.....	118
§11-201-29	Appeal Hearings; Witnesses .....	120
§11-201-30	Appeal Hearings; Procedures .....	120

Last updated 1985.

<http://health.hawaii.gov/opppd/files/2015/06/11-201.pdf>

## Subchapter 1 Purpose

### §11-201-1 Purpose

This chapter governs procedures before the **environmental council** of the State of Hawaii under chapter 343, Hawaii Revised Statutes, and other-related acts as may now or hereafter be administered by the **council**. They shall be construed to effectuate the purposes of chapter 343, Hawaii Revised Statutes, and to secure the just and speedy determination of every **proceeding**.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

## Subchapter 2 Definition

### §11-201-2 Definitions

As used in this chapter, unless the context otherwise specifically requires:

"**Appellant**" means an applicant who appeals the non-acceptance by an agency of that person's environmental impact statement.

"**Council**" means the **environmental council** of the State of Hawaii. Its membership shall be as provided in section 341-3, Hawaii Revised Statutes.

"**Director**" means the **director** of environmental quality control.

"**Office**" means the **office of environmental quality control**.

"**Party**" means each person or agency specifically affected by a **proceeding** other than as a member of the general public. The attorney general or the attorney general's representative shall be designated as "counsel for the **council**" and shall be **party** to all **proceedings** governed by this chapter.

"**Petitioner**" means the person or agency on whose behalf a petition is made to the **council** for a declaratory ruling or for the adoption, amendment, or repeal of any rule of the **council**.

"**Proceeding**" means the **council's** elucidation and consideration of the relevant facts and applicable laws and its action thereupon with respect to a particular subject within its jurisdiction, initiated by a filing or submittal by petition, appeals, and applications by an interested person or agency or by a **council** notice or order, and shall include, but not be limited to:

- (1) **Proceedings** involving the adoption, amendment, or repeal of any rule of the **council**;
- (2) **Proceedings** involving declaratory rulings; and
- (3) Appeals instituted at the request of an applicant, involving the non-acceptance of the applicant's environmental impact statement by the agency responsible for accepting that statement.

"**Respondent**" means an agency whose determination is subject to an appeal filed with the **council**.

[Eff 12/6/85] (Auth: HRS §343-6) (Imp: HRS §343-6)

### Subchapter 3 Environmental Council

#### §11-201-3 Environmental Council

- (a) The office of the **environmental council** shall be located at such place and address as the **council** shall from time to time designate. All communications to the **council** shall be addressed to the **environmental council**, unless otherwise specifically directed.
- (b) The office of the **council** shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order.
- (c) The **council** may meet and exercise its powers in any part of the State of Hawaii. All meetings of the **council** shall be open to the public, except that the **council** may meet in executive meetings, from which the public may be excluded, by a recorded vote of not less than two-thirds of the members present. An executive meeting shall be authorized only when, in accordance with law, it is deemed necessary for the protection of the character or reputation of any person or the protection of secret processes or methods of manufacture of any person or when the attorney general determines it is necessary for the preparation of the prosecution or defense of any action or **proceeding**. No order, ruling, appointment, contract, or decision shall be finally acted upon at an executive meeting. Meetings shall be held at times as the **council** deems advisable. Meetings may be scheduled by consensus of the **council** during the course of a meeting or during intervening days, at the call of the **council** chairperson or the **director** upon notifying the **council** chairperson. The public, **petitioners, appellants, and respondents** shall receive reasonable notice of all meetings. Notice of meetings of the **council** shall:
  - (1) Be sent to all requesting to be on the mailing list for this purpose and other interested parties;
  - (2) Be posted in the office of the **environmental council**; and
  - (3) Be distributed to the news media, if possible.
- (d) A majority of all members to which the **council** is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the **council** is entitled shall be necessary to make valid

any action of the **council** except those actions that the **council** authorizes, by concurrence of a majority of all members to which it is entitled, to be performed in its behalf by a limited number of duly designated **council** members, in which case the concurrence of a majority of all the **council** members so designated shall be necessary to make an action valid.

- (e) The **council** shall maintain minutes of its meetings, setting forth an accurate record of votes and actions taken at the meetings. Unless otherwise required by the governor, the minutes need not include a verbatim record of discussions at meetings. The minutes of the **council** shall be deemed public records, provided that the minutes of any executive meeting from which the public has been excluded may remain confidential, as long as their publication would defeat the lawful purpose as stated in subsection (c), but no longer.
- (f) All decisions, orders, and other actions of the **council** shall be authenticated or signed by the **council** members acting in the **proceeding** or by the chairperson upon delegation by the **council** members acting in the **proceeding**. Official copies of decisions, orders, and other **council** actions may be issued under the signature of the chairperson of the **council** or the chairperson's delegate.
- (g) All documents required to be filed with the **council** shall be filed in the office of the **council** at Honolulu, Hawaii, within time limits as prescribed by law, rules, or by order of the **council**. Requests for public information, copies of official documents, or opportunity to inspect public records may be made in writing to the **council** office or in person at the office.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 92-4, 92-5, 92-7, 92-9, 343-3, 343-6)

§11-201-4 Delegation of Administrative Duties

- (a) The **council** may delegate to any individual the power or authority vested in the **council** as it deems reasonable and proper for the effective administration of chapter 343, Hawaii Revised Statutes, except the power to adopt, amend, or repeal rules.
- (b) The **council** by written resolution adopted by a majority of the members to which it is entitled, may appoint a hearing officer or officers, who may, but need not be, members of the **council**, or a disinterested attorney at law or other person or a combination of any of them to hold a hearing as provided in this chapter and take testimony upon the matters involved in the hearing and transmit to the **council** a record of the hearing, including a recording or transcript and a summary of the evidence taken at the hearing. After review of the testimony and evidence, a majority of the members to which the **council** is entitled shall render a decision on the matter.

- (c) Any hearing officer may be paid a reasonable compensation as shall be determined by the **council**, provided that no member of the **council** shall be eligible to receive any compensation.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### Subchapter 4 Public Records

##### §11-201-5 Public Records

- (a) The term "public records" as used in this chapter is defined as in section 92-50, Hawaii Revised Statutes, and shall include all maps, rules, environmental impact statements and related documents, written statements of policy or interpretation formulated, adopted, or used by the **council** all final opinions and orders, the minutes of meeting of the **council**, and any other material on file in the office of the **council**, which shall include all statements and other documents prepared under the provisions of chapter 343, Hawaii Revised Statutes, except materials and minutes submitted and reported in executive meetings of the **council**.
- (b) All public records shall be available for inspection in the office of the **council** at Honolulu, Hawaii, during established office hours unless public inspection of those records is in violation of any state or federal law.
- (c) Public records printed or reproduced by the **council** shall be given to any person requesting them and paying the reasonable cost thereof.
- (d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled expeditiously.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6, 92-50)

#### Subchapter 5 Proceedings Before Council or Hearing Officer

##### §11-201-6 Proceedings Before Council or Hearing Officer

- (a) The **council** on its own motion, or upon the petition of any interested person or any agency of the federal, state, or county government, may hold such **proceedings** as it may deem necessary from time to time in the performance of its duties, or the formulation of its rules. Procedures to be followed by the **council**, unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, shall be as in the opinion of the **council** will best serve the purposes of the **proceeding**.
- (b) An individual may appear in the individual's own behalf or as an authorized representative of a partnership, corporation, trust or association, and an officer or employee of an agency of the state or a political subdivision of the state may represent the agency in any **proceeding** before the **council**.
- (c) A person or agency may be represented by or with any person, counsel, or consultant in any **proceeding** under this chapter, except as provided in subsection (e).

- (d) When an individual acting in a representative capacity appears in person or signs a paper in practice before the **council**, that individual's personal appearance or signature shall constitute a representation to the **council** that under this chapter and the applicable statute, that individual is authorized and qualified to represent the particular person on whose behalf the individual acts. The **council** at any time may require any person transacting business with the **council** in a representative capacity to show in writing that person's authority and a qualification to act in that capacity.
- (e) Bar to appearance.
- (f) No individual, whether associated with the **council** as a member, officer, employee, or counsel shall be permitted to appear before the **council** on behalf of or to represent in any manner any **party** in connection with any **proceeding** or matter that the individual has handled or passed upon while associated in any capacity with the **council** after June 2, 1975;
- (g) Any person or agency appearing before the **council** in any **proceeding** or matter shall not in relation thereto knowingly accept assistance from and compensate any individual who would be precluded by paragraph (1);
- (h) No individual who has been associated with the **council** as a member, officer, employee, or counsel thereof, shall be permitted to appear before the **council** in behalf of, or to represent in any manner, any person or agency in connection with any **proceeding** or matter that was pending before the **council** at the time of the individual's association with the **council** unless that individual shall first have obtained the written consent of the **council** upon a verified showing that the individual did not give personal consideration to the matter or **proceeding** as to which consent is sought or gain particular knowledge of the facts thereof during that individual's association with the **council**;
- (i) This subsection shall not apply to any individual or agency whose association with the **council** has been terminated for a period of one year.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§84-18, 343-6)

§11-201-7 Disqualification of Council Member or Hearing Officer

Any **party** to a hearing, up to five days before the **proceeding**, may file an affidavit that one or more of the **council** members or a hearing officer has a personal bias or prejudice. The **council** member against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the **council**. If the **council** member or hearing officer chooses to answer the affidavit, the remaining **council** members shall decide by a majority of all the members to which the **council** is entitled whether that **council** member or hearing officer shall be disqualified from the **proceeding**. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within the time. Any **council** member or hearing officer may request disqualification by filing with the chairperson a certificate that deems

that person unable for any reason to preside with impartiality in the pending hearing.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-8 Consolidations

The **council**, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more **proceedings** that involve substantially the same parties, or issues that are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the **proceedings**.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-9 Filing of Documents

- (a) All requests, appeals, pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the **council** in any **proceeding** shall be filed at the office of the **council** at Honolulu, Hawaii, within the time limits prescribed by law, this chapter, or by order of the **council**. The date on which the papers are received shall be regarded as the date of filing.
- (b) All requests and appeals filed with the **council** shall be written in black ink, typewritten, mimeographed, or printed; shall be plainly legible; and shall be on strong, durable paper not larger than 8-1/2" X 14" in size, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.
- (c) All documents shall be signed in indelible ink by the **party** signing or by a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement contained therein is true, and no such statement is misleading; and that it is not interposed for delay.
- (d) Unless otherwise specifically provided by a particular rule or order of the **council**, an original and fifteen copies of all papers shall be filed.
- (e) All documents filed by any person or agency in any **proceeding** shall state on the first page thereof the name, mailing address, and business telephone number, if any, of the individual or individuals who may be served with any documents filed in the **proceeding**.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-10 Amendment of Documents and Dismissal

If any document filed in a **proceeding** is not in substantial conformity with the applicable rules of the **council** as to contents thereof, or is otherwise insufficient, the **council**, on its own motion or on motion of any **party**, may strike the

document or require its amendment. If amended, the document shall be effective as of the date of the receipt of the amendment.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-11 Retention of Documents

All documents filed with or presented to the **council** shall be retained in the files of the **council**. The **council** may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-12 Service of Process

- (a) The **council** shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.
- (b) All papers served by either the **council** or any **party** shall be served upon all parties or their counsel. Any counsel entering an appearance subsequent to the **proceeding** shall notify all other counsel then of record and all parties not represented by counsel of the fact.
- (c) The final order, and any other paper required to be served by the **council** upon a **party**, shall be served upon the **party** and a copy shall be furnished to counsel of record.
- (d) Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail.
- (e) Service upon parties, other than the **council**, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped and properly addressed to the parties involved.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-13 Council Decision

All final orders, opinions, or rulings entered by the **council** in the **proceeding** and rules adopted by the **council** shall be served upon the parties participating in the **proceeding** by regular mail or personal delivery by the **council** and shall be released for general publication. Copies of the published material shall be available for public inspection in the office of the **council** or may be obtained upon request and upon payment of reasonable charges.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-14 Computation of Time

In computing any period of time prescribed or allowed by this chapter, order of the **council**, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Sunday or legal holiday in the State of Hawaii.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-15 Continuance or Extensions of Time

Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by this chapter, the **council**, upon motion and the concurrence of a majority of all the members to which the **council** is entitled, may permit the act to be done after expiration of the specified period if the delinquency is clearly shown to have been the result of excusable neglect and the **council** will still have enough time to comply with applicable statutory time limits.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

Subchapter 6 Rulemaking

§11-201-16 Initiation of Rulemaking Proceedings

- (a) The **council**, at any time on its own motion, may initiate **proceedings** for the adoption, amendment, or repeal of any rule of the **council**. Procedures to be followed in rulemaking **proceedings** shall be set forth in this chapter and applicable law.
- (b) Any interested person or agency may petition the **council** for the adoption, amendment, or repeal of any rule of the **council**. Petitions for rulemaking filed with the **council** shall become matters of public record.
- (c) Petitions for rulemaking shall conform to section 11-201-9 and shall contain:
  - (1) The name, address, and telephone number of each **petitioner**;
  - (2) The signature of each **petitioner**;
  - (3) A draft or the substance of the proposed adoption or amendment or a designation of the provisions the repeal of which is desired;
  - (4) A statement of the **petitioner's** interest in the subject matter; and
  - (5) A statement of the reasons in support of the proposed adoption, amendment, or repeal.
- (d) The **council**, within thirty days after the filing of a petition for rulemaking, shall either deny the petition or initiate public rulemaking **proceedings** in accordance with chapter 91, Hawaii Revised Statutes.
- (e) Any petition that fails in any material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of public rulemaking **proceedings** shall not be considered by the **council**. The **council** shall notify the **petitioner** in writing of the denial, stating the reasons therefore. Denial of a petition shall not operate to prevent the **council** from acting, on its own motion, on any matter disclosed in the petition. The **petitioner** may seek a review



of the denial through the circuit court pursuant to chapter 91, Hawaii Revised Statutes.

- (f) If the **council** determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking **proceedings**, the procedures to be followed shall be as set forth in sections 11-201-17 to 11-201-19 and applicable law.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-6, 343-6) (Imp: HRS §§91-2, 91-6, 343-6)

#### §11-201-17 Notice of Public Hearing

- (a) When, pursuant to a petition therefor or upon its own motion, the **council** proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and at least once in a newspaper which is printed and issued at least twice a week in the county affected by the proposed action. The notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the **council's** rulemaking **proceedings**. All notices shall be published at least twenty days prior to the date set for public hearing.
- (b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:
- (1) A statement of the date, time, and place where the public hearing will be held;
  - (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
  - (3) A statement of the substance of the proposed rulemaking.

[Eff 12/6/85] Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 92-41, 343-6)

#### §11-201-18 Conduct of Hearing

- (a) The public hearing for the adoption, amendment, or repeal of rules shall be heard before the **council** and presided over by the chairperson of the **council**, or, in the chairperson's absence by another member designated by the **council**. The hearing shall be conducted in a manner as to afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.
- (b) Each hearing shall be held at the time and place set in the notice of hearing but at the time and place may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.
- (c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters

specified in the notice of hearing in the order as the presiding officer shall prescribe.

- (d) Each witness, before **proceeding** to testify, shall state the witness' name, address, and whom the witness represents at the hearing, and shall give the information respecting the appearance of the witness as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the **council** or by any other representative of the **council**. Cross-examination by persons or agencies shall be permitted only at the discretion of the presiding officer.
- (e) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and fifteen copies of written comments, recommendations, or replies shall be submitted.
- (f) Unless otherwise specifically ordered by the **council**, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, sixteen copies of the exhibits shall be submitted.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

#### §11-201-19 Council Action

The **council** shall consider all relevant comments and materials of record before taking final action in a rulemaking **proceeding**. Final action should be taken within twenty working days after:

- (1) The final public hearing; or
- (2) The expiration of any extension period for submission of written comments or recommendations.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

#### §11-201-20 Emergency Rulemaking

The **council** may adopt emergency rules pursuant to section 91-3, Hawaii Revised Statutes.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

## Subchapter 7 Declaratory Rulings

### §11-201-21 Petitions for Declaratory Rulings

- (a) On petition of an interested person or agency, the **council** may issue a declaratory order as to the applicability of any statutory provision or any rule or order of the **council** and may also make determinations under chapter 343, Hawaii Revised Statutes. The petition shall conform to the requirements of section 11-201-9 and shall contain:
- (1) The name, address, and telephone number of each **petitioner**;
  - (2) The signature of each **petitioner**;
  - (3) A designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
  - (4) A statement of the **petitioner's** interest in the subject matter, including the reasons for submission of the petition;
  - (5) A statement of the **petitioner's** position or contention; and
  - (6) A memorandum of authorities, containing a full discussion of reasons and legal authorities, in support of the position or contention.
- (b) The **council** shall inform the public regarding petitions for declaratory rulings in the **office's** periodic **bulletin**. Within thirty days after the submission of a petition for declaratory ruling, the **council** shall either deny the petition in writing, stating the reasons for the denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 11-201-23, provided that if the matter is set for hearing, the **council** shall render its findings and decision within fifteen days after the close of the hearing. Any determination by the **council** regarding the petition for declaratory ruling shall be published in the **office's** periodic **bulletin**.
- (c) The **council**, without notice or hearing, may dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this section.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

### §11-201-22 Refusal to Issue a Declaratory Order

The **council**, for good cause, may refuse to issue a declaratory order with specific reasons for the determination. Without limiting the generality of the foregoing, the **council** may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;

- (2) The **petitioner's** interest is not of the type that would give the **petitioner** standing to maintain an action if judicial relief is sought;
- (3) The issuance of the declaratory order may affect the interests of the **council** in a litigation that is pending or may reasonably be expected to arise; and
- (4) The matter is not within the jurisdiction of the **council**.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

#### §11-201-23 Request for Hearing

Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing shall be granted to the **petitioner** or to a **party** in interest, the **council** may order the **proceeding** set down for hearing. Any **petitioner** or **party** in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the request the reasons, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, why the matters alleged in the petition will not permit the fair and expeditious disposition of the petition. To the extent that the request for a hearing is dependent upon factual assertion, the request shall be accompanied by affidavits establishing these facts. In the event a hearing is ordered by the **council**, chapter 91, Hawaii Revised Statutes, shall govern the **proceedings**.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

#### §11-201-24 Applicability of Order

An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

#### §11-201-25 Declaratory Ruling on Council's Own Motion

Notwithstanding this chapter, the **council**, on its own motion or upon request but without notice or hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

### Subchapter 8 Appeals

#### §11-201-26 Filing of Appeal

- (a) An **appellant**, within sixty calendar days after non-acceptance of the environmental impact statement by an agency, may file an appeal with the **council** against the agency, charging that the agency has improperly determined that the statement is not acceptable. A copy of the appeal with accompanying documents shall also be sent to the **respondent**.

- (b) A document filed by an **appellant** initiating an appeal to the **council** shall be accompanied by a nonrefundable fee of \$50 to partially cover publication and administrative costs.
- (c) The appeal shall conform to the requirements of section 11-201-9. The appeal shall contain:
  - (1) A list of the persons who are proposing the action;
  - (2) A copy of the environmental impact statement submitted by the **appellant** to the agency and a copy of the subsequent revised statement, if any;
  - (3) A copy of the comments and other communications received during the review of the statement that are pertinent to the issues involved in the complaint;
  - (4) A copy of the findings and reasons submitted by the agency to the **appellant** in support of its determination of non-acceptance; and
  - (5) A concise memorandum setting forth the facts and law in support of the appeal.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§343-5, 343-6)

#### §11-201-27 Filing of Response to Appeal

At least five working days before the date set for hearing on an appeal, the **respondent** shall file with the **council** a concise memorandum setting forth the facts and law in support of its determination to not accept the **appellant's** environmental impact statement.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§343-5, 343-6)

#### §11-201-28 Appeal Hearings; Generally

- (a) An appeal shall be conducted as a contested case under chapter 91, Hawaii Revised Statutes. The **council**, upon receipt of an appeal, shall order the matter set for hearing. A notice of hearing shall be served at least fifteen days before the hearing upon the **appellant** and the **respondent** agency.
- (b) Appeals shall be heard before the **council** or a hearing officer duly appointed by the **council**. A hearing officer shall be appointed at least fifteen days prior to the hearing and notice shall be given to all parties at that time.
- (c) When a **proceeding** is conducted before the **council** itself, the **proceeding** shall be presided over by the chairperson of the **council** or, in the chairperson's absence, by another member designated by the **council**.
- (d) The presiding officer at a **proceeding** shall have authority to:
  - (1) Control the course of the hearing;

- (2) Hold conferences open to the public on which they have had notice, for the settlement or simplification of issues;
  - (3) Administer oaths and affirmations;
  - (4) Grant application for and issue subpoenas;
  - (5) Take or cause deposition to be taken;
  - (6) Rule upon offers of proof and receive relevant evidence;
  - (7) Limit lines of questioning or testimony that are irrelevant, immaterial, or repetitious;
  - (8) Rule upon all objections, procedural requests, and motions that do not involve final determination of **proceedings**;
  - (9) Dispose of any other matter that normally and properly arises in the course of the **proceeding**; and
  - (10) Take all other actions authorized by chapter 343, Hawaii Revised Statutes, rules, or by any other statute, that are deemed necessary to the orderly and just conduct of the hearing.
- (e) The hearing officer shall have the powers as are accorded to the presiding officer in the hearing of an appeal as provided in subsection (d). In the event that the hearing officer is absent or unable to act, the powers and duties to be performed under this chapter in connection with the **proceeding**, without abatement of the **proceeding** unless otherwise ordered by the **council**, may be assigned to another hearing officer duly appointed by the chairperson.
- (f) No hearing officer or **council** member shall be assigned to serve in any **proceeding** who:
- (1) Has any pecuniary interest in any matter or business involved in the **proceeding**;
  - (2) Is related within the first degree by blood or marriage to any **party** to the **proceeding**; or
  - (3) Has participated in an investigation preceding the institution of the **proceeding** or in a determination that it should be instituted or in the development of the evidence to be introduced therein. However, if a **council** member has participated in making a recommendation to an agency under section 343-5(c), Hawaii Revised Statutes, this shall not disqualify that **council** member.
- (g) Each hearing shall be held on the island where the dispute has arisen. Hearings shall be held, on the first day, at the time and place set forth in the notice of hearing, but may at that time and place be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof by the presiding officer or hearing officer at the hearing.
- (h) Hearings shall be open to the public.

- (i) The record of the hearing shall be compiled in conformance with section 91-9(e), Hawaii Revised Statutes. The **council** shall make provisions for stenographic record of the testimony, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. Any person desiring a copy of the record of a hearing or any part thereof shall be entitled to the same upon written application to the **council** and upon payment of reasonable costs thereof.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-9, 91-9.5, 343-5, 343-6)

§11-201-29 Appeal Hearings; Witnesses

- (a) Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing may be issued by the presiding officer or any designated member of the **council** or by the hearing officer. Application for subpoenas shall be made in writing to the **council** or hearing officer. The application shall specify the particular documents or data desired and shall show their relevancy to the issues involved. Application shall be made at least three days prior to the hearing. If application is made at a later time, the **council** may, in its discretion, issue subpoenas or continue the hearing or any part thereof. Enforcement of obedience to subpoenas issued by the presiding officer or any designated member of the **council** or by the hearing officer and served pursuant to this chapter shall be effected by written application of any member of the **council** to any circuit judge.
- (b) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and those fees and mileage shall be paid by the **party** at whose instance the witnesses appear. Fees for the depositions shall be paid by the **party** at whose request the depositions are taken.
- (c) Witnesses shall be placed under oath or affirmation prior to testifying.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: §§91-9, 343-5, 343-6)

§11-201-30 Appeal Hearings; Procedures

- (a) At the commencement of the hearing, the presiding officer or hearing officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. This procedure, unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, shall be such as in the opinion of the presiding officer or hearing officer shall best serve the purposes of the hearing without prejudice to any **party**.
- (b) All parties shall be given reasonable opportunity to offer testimony with respect to the matters relevant to the **proceeding**. Witnesses, before **proceeding** to testify, shall state their name, address, whom they represent at the hearing, and shall give the information respecting their appearance relevant to the **proceeding** as the presiding officer or hearing officer may request. The presiding officer or hearing officer shall

confine the testimony to the matters for which the hearing has been called but need not apply the technical rules of evidence except as required by law. Each witness shall be subject to questioning by members of the **council** and by any representative of the **council**. Each witness shall also be subject to cross-examination by the adverse **party**. Each **party** shall have the right to submit rebuttal evidence and rebuttal arguments.

- (c) The **council** or hearing officer shall take notice of judicially recognizable facts and may take notice of generally recognizable technical or scientific facts within the **council's** or hearing officer's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and are afforded the opportunity to contest the facts so noticed.
- (d) At the hearing, the presiding officer or hearing officer may require the production of further evidence upon any issue.
- (e) After all the evidence has been presented, the **council** or hearing officer shall give the parties opportunity to summarize. Within a reasonable time after the final arguments have been completed and all requested memoranda submitted, the **council** or hearing officer shall bring the matter to a close.
- (f) The **council** or hearing officer shall permit parties to file proposed findings and conclusions, together with the reasons therefor at the close of the hearings or within the time as is extended at the discretion of the **council** or hearing officer. The proposal shall be in writing and shall contain references to the record and to the authorities relied upon. Copies thereof shall be furnished to all parties.
- (g) The **council**, as soon as practicable and unless otherwise stipulated by the parties, not later than thirty days after receipt of the appeal, shall notify the **appellant** of the decision and order. This decision and order shall include separate findings of facts and conclusions of law if the decision is adverse to the **appellant**. The **council** shall incorporate in the decision a ruling upon each proposed finding so presented. Parties to the **proceeding** shall be notified by delivering or mailing a certified copy of the decision and order and any accompanying findings and conclusions to each **party** or to the **party's** attorney of record.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-10, 91-11, 91-12, 343-5, 343-6)

*Historical Note*

Chapter 11-201, Administrative Rules, is based substantially on the Rules of Practice and Procedure of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]



## GLOSSARY

This glossary presents the defined terms in Chapter 343, HRS, and Chapter 11-200.1, HAR. Statutory definitions are identified and listed before the rule version, including those specific to only Section 343-5.5, HRS, and Subsection 11-200.1-9(b), HAR. Unless defined in Chapter 11-200.1, HAR, or in Chapter 343, HRS, a proposing agency or approving agency may use its administrative rules or statutes that they implement to interpret undefined terms.

[343] "**Acceptance**" means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an **environmental impact statement**, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the **statement**.

"**Acceptance**" means a formal determination that the document required to be filed pursuant to chapter 343, HRS, fulfills the requirements of an **EIS**, as prescribed by section 11-200.1-28. **Acceptance** does not mean that the **action** is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter.

"**Accepting authority**" means, in the case of **agency actions**, the respective governor or mayor, or their authorized representative, and in the case of **applicant actions**, the **agency** that initially received and agreed to process the request for an **approval**, that makes the determination that the **EIS** fulfills the requirements for **acceptance**.

[343] "**Action**" means any program or project to be initiated by any agency or **applicant**.

"**Action**" means any **program** or **project** to be initiated by an **agency** or **applicant**.

"**Addendum**" means an attachment to a **draft EA** or **draft EIS**, prepared at the discretion of the **proposing agency**, **applicant**, **accepting authority**, or **approving agency**, and distinct from a **supplemental EIS**, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the **draft EA** or the **draft EIS** filed with the **office**.

[343] "**Agency**" means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

"**Agency**" means any department, office, board, or commission of the state or county government that is part of the executive branch of that government.

[343] "**Applicant**" means any **person** who, pursuant to statute, ordinance, or rule, officially requests **approval** for a proposed **action**.

"**Applicant**" means any **person** that, pursuant to statute, ordinance, or rule, officially requests **approval** from an **agency** for a proposed **action**.

[343] "**Approval**" means a **discretionary consent** required from an **agency** prior to actual implementation of an **action**.

"**Approval**" means a **discretionary consent** required from an **agency** prior to implementation of an **action**.

"**Approving agency**" means an **agency** that issues an **approval** prior to implementation of an **applicant action**.

[343] "**Council**" means the environmental **council**.

"**Council**" means the environmental **council**.

"**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 the other **actions**. **Cumulative impacts** can result from individually minor but collectively significant **actions** taking place over a period of time.

[343] "**Discretionary consent**" means a consent, sanction, or recommendation from an **agency** for which judgment and free will may be exercised by the issuing **agency**, as distinguished from a ministerial consent.

"**Discretionary consent**" means a consent, sanction, or recommendation from an **agency** for which judgment and free will may be exercised by the issuing **agency**, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an **agency** based upon a given set of facts, as prescribed by law without the use of judgment or discretion.

[343-5.5 and 11-200.1-9(b) only] "**Discretionary consent**" means:

- (1) An **action** as defined in section 343-2; or
- (2) An **approval** from a decision-making authority in an **agency**, which **approval** is subject to a public hearing.

"**Draft environmental assessment**" means the EA submitted by a **proposing agency** or an **approving agency** for public review and comment when that **agency** anticipates a **finding of no significant impact (FONSI)**.

"**Effects**" or "**impacts**" as used in this chapter are synonymous. **Effects** may include ecological **effects** (such as the **effects** on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic **effects**, historic **effects**, cultural **effects**, economic **effects**, social **effects**, or health **effects**, whether **primary**, **secondary**, or **cumulative**, whether immediate or delayed. **Effects** may also include those **effects** resulting from **actions** that may have both beneficial and detrimental **effects**, even if on balance the **agency** believes that the **effect** will be beneficial.

"**EIS preparation notice**", "**EISPN**", or "**preparation notice**" means a determination that an **action** may have a **significant effect** on the **environment** and, therefore, will require the preparation of an **EIS**, based on either an **EA** or an **agency's** judgment and experience that the proposed **action** may have a **significant effect** on the **environment**.

"**EIS public scoping meeting**" means a meeting in which **agencies**, citizen groups, and the general public assist the **proposing agency** or **applicant** in determining the range of **actions**, alternatives, **impacts**, and proposed mitigation measures to be considered in the **draft EIS** and the significant issues to be analyzed in depth in the **draft EIS**.

"**Emergency action**" means an **action** to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding the immediate **action**.

"**Environment**" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed **action**, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

[343] "**Environmental assessment**" means a written evaluation to determine whether an **action** may have a significant effect.

"**Environmental assessment**" or "**EA**" means a written evaluation that serves to provide sufficient evidence and analysis to determine whether an **action** may have a **significant effect**.

[343] "**Environmental impact statement**" or "**statement**" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed **action**, effects of a proposed **action** on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed **action**, measures proposed to minimize adverse effects, and alternatives to the **action** and their environmental effects.

The initial **statement** filed for public review shall be referred to as the draft **statement** and shall be distinguished from the final **statement** which is the document that has incorporated the public's comments and the responses to those comments. The final **statement** is the document that shall be evaluated for acceptability by the respective accepting authority.

"**Environmental impact statement**", "**statement**", or "**EIS**" means an informational document prepared in compliance with chapter 343, HRS. The initial **EIS** filed for public review shall be referred to as the **draft EIS** and shall be distinguished from the **final EIS**, which is the document that has incorporated the public's comments and the responses to those comments. The **final EIS** is the document that shall be evaluated for acceptability by the **accepting authority**.

"**Exemption list**" means a list prepared by an **agency** pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the **agency** that by their nature do not have the potential to individually or cumulatively adversely affect the **environment** more than negligibly and that the **agency** considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of **actions** the **agency** finds fit into the general types of **action** enumerated in section 11-200.1-15.

"**Exemption notice**" means a notice produced in accordance with subchapter 8 for an **action** that a **proposing agency** or **approving agency** on behalf of an **applicant** determines to be exempt from preparation of an **EA**.

"**Final environmental assessment**" means either the **EA** submitted by a **proposing agency** or an **approving agency** following the public review and comment period for the **draft EA** and in support of either a **FONSI** or an **EISPN**.

[343] "**Finding of no significant impact**" means a determination based on an **environmental assessment** that the subject **action** will not have a significant effect and, therefore, will not require the preparation of an **environmental impact statement**.

"**Finding of no significant impact**" or "**FONSI**" means a determination by an **agency** based on an **EA** that an **action** not otherwise exempt will not have a **significant effect** on the **environment** and therefore does not require the preparation of an **EIS**.

[343] "**Helicopter facility**" means any area of land or water which is used, or intended for use for the landing or takeoff of helicopters; and any appurtenant areas which are used, or intended for use for helicopter related activities or rights-of-way.

"**Impacts**" means the same as "**effects**".

[343-5.5 and 11-200.1-9(b) only] "**Infrastructure**" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"**Issue date**" means the date imprinted on the **periodic bulletin** required by section 343-3, HRS.

"**National Environmental Policy Act**" or "**NEPA**" means the **National Environmental Policy Act** of 1969, Public Law 91-190, 42 U.S.C. sections 4321-4347, as amended.

[343] "**Office**" means the **office** of environmental quality control.

"**Office**" means the office of environmental quality control.

"**Periodic bulletin**" or "**bulletin**" means the document required by section 343-3, HRS, and published by the **office**.

[343] "**Person**" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an **agency**.

"**Person**" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an **agency**.

[343] "**Power-generating facility**" means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

[343-5.5 and 11-200.1-9(b) only] "**Primary action**" means an **action** outside of the highway or public right-of-way that is on private property.

"**Primary impact**", "**primary effect**", "**direct impact**", or "**direct effect**" means **effects** that are caused by the **action** and occur at the same time and place.

"**Program**" means a series of one or more **projects** to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A **program** may include: a number of separate **projects** in a given geographic area which, if considered singly, may have minor **impacts**, but if considered together, may have **significant impacts**; separate **projects** having generic or common **impacts**; an entire plan having wide application or restricting the range of future alternative policies or **actions**, including new significant changes to existing land use plans, development plans, zoning regulations, or **agency** comprehensive resource management plans; implementation of multiple **projects** over a long time frame; or implementation of a single **project** over a large geographic area.

"**Project**" means a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential **impact** to the **environment**.

"**Proposing agency**" means any state or county **agency** that proposes an **action** under chapter 343, HRS.

[343-5.5 and 11-200.1-9(b) only] "**Secondary action**" means an **action** involving **infrastructure** within the highway or public right-of-way.

"**Secondary impact**", "**secondary effect**", "**indirect impact**", or "**indirect effect**" means an **effect** that is caused by the **action** and is later in time or farther removed in distance, but is still reasonably foreseeable. An **indirect effect** may include a growth-inducing **effect** and other **effects** related to induced changes in the pattern of land use, population density or growth rate, and related **effects** on air, water, and other natural systems, including ecosystems.

[343] "**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.

"**Significant effect**" or "**significant impact**" 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 and guidelines as established by law, adversely affect the economic welfare, social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200.1-13.

"**Supplemental EIS**" means an updated **EIS** prepared for an **action** for which an **EIS** was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.

"**Trigger**" means any use or activity listed in section 343-5(a), HRS, requiring environmental review.

[343] "**Wastewater treatment unit**" means any plant or facility used in the treatment of wastewater.