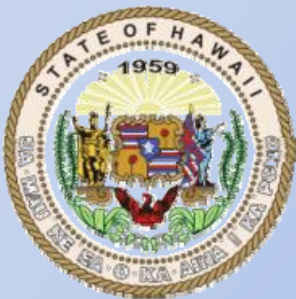


# Hawai'i Environmental Policy Act Citizen's Guide

*October 2014*



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***Introduction:***

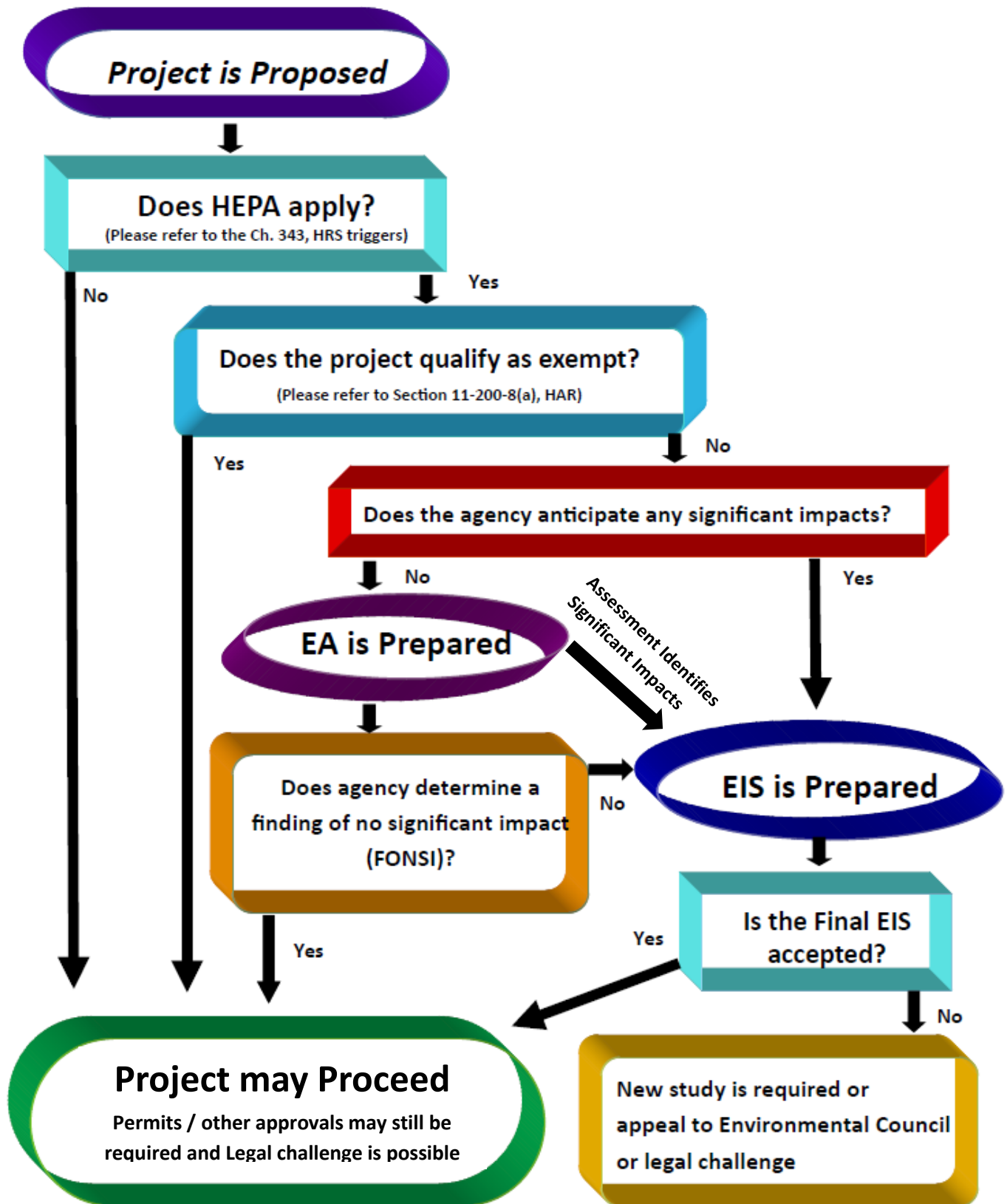
***This citizen's guide is a summary of the environmental review process and how it works. Please refer to the statute (Chapter 343, Hawai'i Revised Statutes (HRS)), its implementing rules (Hawai'i Administrative Rules (HAR) Chapters 11-200 and 11-201), and the latest version of the Guidebook on the Office of Environmental Quality Control (OEQC) website for more specifics. This document is to be used as general information only.***

***Changes in the laws, rules and Guidebook can occur, and users are advised to check periodically with OEQC for updates to the review process. For example, the statute was revised in 2012:***

- 1) To allow agencies to go directly to an environmental impact statement (EIS); and***
- 2) To exempt from review certain actions in public rights of way.***

***Also, the Environmental Council is currently in a rule revision process; the administrative rules were last amended in 1996.***

# Environmental Review Decision-Making Process



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**The following acronyms are frequently used throughout this Citizen’s Guide:**

*OEQC – Office of Environmental Quality Control*

*HEPA – Hawai‘i Environmental Policy Act*

*DEA – Draft Environmental Assessment*

*FEA – Final Environmental Assessment*

*FONSI – Finding of No Significant Impacts*

*EISPN – Environmental Impact Statement Preparation Notice*

*DEIS – Draft Environmental Impact Statement*

*FEIS – Final Environmental Impact Statement*

# Hawai'i Environmental Policy Act (HEPA)

## Chapter 343, Hawai'i Revised Statutes (HRS)

### 1.0 Overview

Hawai'i's environmental review process was first enacted in 1974 to ensure that the environmental consequences of actions proposed within our state are appropriately considered.

The Hawai'i Environmental Policy Act (HEPA or Chapter 343, HRS) is modeled after the National Environmental Policy Act (NEPA) which became federal law in 1970 and is our country's basic charter for reviewing environmental impacts. HEPA requires that government establish a system of environmental review to the environmental, social, cultural and economic impacts of proposed projects or programs prior to implementation. This is done through the preparation of environmental reviews. The law also provides a method for public notification and review in the planning process.

HEPA includes the following statutes and administrative rules:

- Chapter 343, HRS: Environmental Impact Statements
- Sections 11-200, Hawai'i Administrative Rules (HAR): Environmental Impact Statement Rules
- Sections 11-201, HAR: Environmental Council Rules of Practice and Procedure

As described in Chapter 343, HRS, the environmental review process is designed to:

- Improve decision making by establishing an environmental review structure that ensures environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.
- Increase public participation in environmental decision-making by integrating citizen concerns into the planning process.

The Office of Environmental Quality Control (OEQC) facilitates the HEPA process.

#### **Chapter 343-1 Findings and Purpose:**

*"[t]he legislature finds that the quality of humanity's environment is critical to humanity's wellbeing, 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."*

## 1.1 Understanding the HEPA Process

Under the State's environmental review law, all activities fall into one of four activities:

1. Those that do not require a Chapter 343, HRS review;
2. Those that trigger Chapter 343, HRS but are exempt;
3. Those that trigger Chapter 343, HRS and require the preparation of an environmental assessment (EA); and
4. Those that trigger Chapter 343, HRS and require the preparation of an environmental impact statement (EIS).



## 1.2 HEPA Triggers:

The nine specific types of actions that prompt environmental review are termed “triggers.”

Projects that propose the use of state or county lands or funds; land in the conservation district, land in the shoreline setback area, any historic site or district, or land in Waikiki are all subject to an environmental review prior to implementation.

Also, any proposed reclassification of conservation land, amendment to a county general plan, new or expanded helicopter facility and the proposal of a wastewater treatment unit, waste-to-energy facility, landfill, oil refinery, or power-generating facility may trigger an environmental review.

***The statutory triggers for HEPA are provided in the following table:***

Table 1: Statutory “Triggers” Initiating HEPA		
	Triggers	Agency Usually Responsible for Complying with Trigger
1.	Use of State or County lands or funds (except for funds for feasibility or planning studies or the acquisition of unimproved real property).	The proposing or approving agency.
2.	Use of any conservation district land.	Office of Conservation and Coastal Lands of the Department of Land and Natural Resources, State of Hawai‘i (DLNR).
3.	Use within a shoreline area.	The respective county planning department.
4.	Use within any historic site.	The respective county planning department.
5.	Use within the Waikiki area	The Department of Planning and Permitting of the City and County of Honolulu.
6.	Amendments to existing county general plans that would result in urban or rural designations, except actions where initiated by a county.	The respective county planning department.
7.	Reclassification of any conservation district land.	The State Land Use Commission
8.	Helicopter facilities that may affect: conservation district land, shoreline area or historic site.	The respective local planning department.
9.	Propose any: Wastewater treatment unit, except for an individual wastewater system or unit serving fewer than fifty single-family dwellings or the equivalent; Waste-to-energy facility; Landfill; Oil refinery; or Power-generating facility exceeding 5 .0 MW.	The agency issuing the discretionary approval.



### 1.3 Statutory Exclusions

The following actions are also excluded from review by statute:

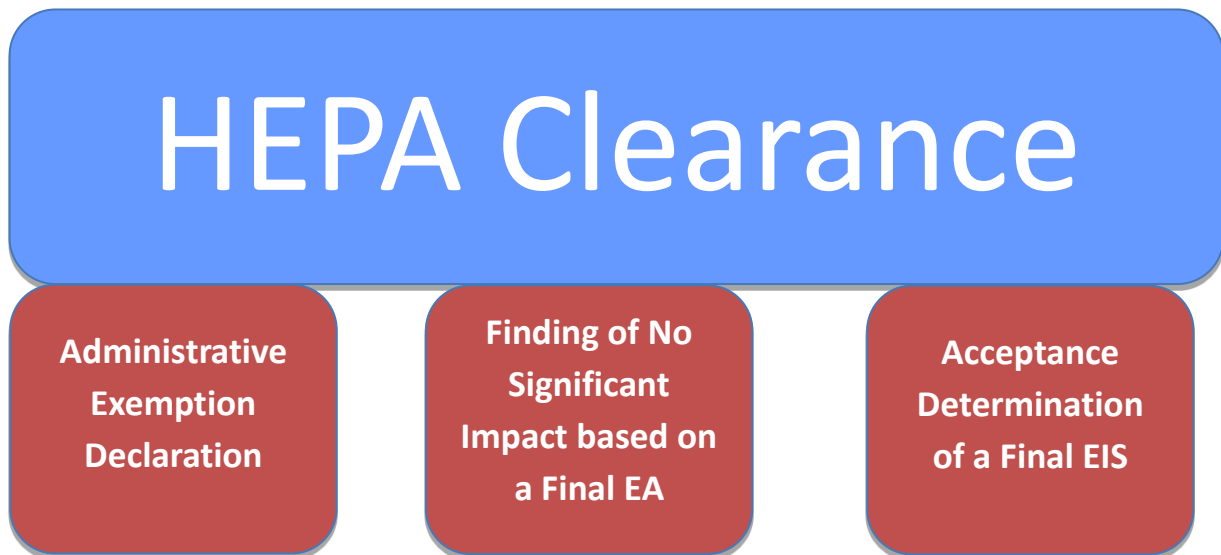
1. Purchase of the assets of the Waiahole water system (Section 343-6.5, HRS)
2. Proposed reconstruction, restoration, repair, or use of any Hawaiian fishpond provided that compliance with certain conditions in Section 183B-2, HRS is met;
3. Affordable housing, provided that compliance with certain conditions in Section 2014H-38, HRS is met;
4. Broadband infrastructure, provided that compliance with certain conditions in Act 151, SLH 2011, is met

Statutory exclusions do not require any action by the agency, while exemption declarations made by an agency are pursuant to the requirements described in Section 3.0

### 1.4 Clearing the Process

If your project “triggers” HEPA (and is not statutorily excluded), in order to fulfill Chapter 343, HRS requirements there are three ways to clear the process:

1. *Administrative exemption declaration* (Section 11-200-8, HAR);
2. *Finding of no significant impact (FONSI) based on a final environmental assessment (FEA)* (Section 11-200-11.2, HAR);
3. *Determination of acceptance of a final EIS or if the approving agency fails to make a timely determination on the acceptability of the Final EIS (as described in Section 343-5E, HRS).*



## 2.0 Consultation

*Please refer to Section 11-200-9, HAR*

Consultation is a critical and imperative part of the HEPA process. At the earliest practicable time, an agency is required to consult (or direct an applicant to consult) with agencies, citizen groups and individuals that might have jurisdiction or expertise with respect to the proposed action. Communities and various stakeholders must be included in the decision making process. The cultural and social importance of the environment to the people who live in the area must be considered.

### 2.1 Consultation Process

Consultation is an *iterative process*. Throughout the Chapter 343 process, agencies, individuals, or organizations may be contacted multiple times, depending on the information received and the questions that arise. Conflict is probable, but through transparency and public participation, potential adverse effects on the environment are identified and solutions considered. It is pragmatic to involve communities and various stakeholders in the decision making process because the public is more likely to 'buy in' to a proposal or plan in which they have had some involvement.

### 2.2 Who needs to be consulted?

Which agencies and individuals to consult will depend on both the *regulatory context and the environmental context*. To determine the regulatory context, it helps to contact all agencies processing required discretionary approvals. Determining the environmental context of the proposed action is also important. For example, the proponent of a new wind farm should consider both the site for the wind turbines and the surrounding environment.

### 2.3 Pre-Assessment Consultation

Consult with the community as well as agencies regarding your proposed activity before preparing your draft EA or EISPN. Groups, individuals and organizations that have expertise in the field, have an interest or will be affected by the activity you are proposing should be consulted. Immediate neighbors or neighboring landowners must be contacted. Consultation with the local planning department is required. The local planning staff can also direct you to other necessary agency contacts.



## 3.0 HEPA Exemptions

*Please refer to Section 11-200-8, HAR, Exempt classes of action.*

Certain projects or actions that trigger HEPA, but are deemed minor or routine by the overseeing state or county agency, may be declared exempt from the Chapter 343 process.

There are 11 classes of actions that agencies may use to find, after consultation, that an action is exempt.

### 3.1 Eleven Exempt Classes of Action:

1. Operations, repairs, or maintenance of existing structure, facilities, equipment, or topographical features, involving negligible or no expansion or 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 same, including, but not limited to:
  - A. Single-family residences less than 3,500 square feet not in conjunction with the building of two or more 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 persons or less 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 evaluation activities that do not result in a serious or major disturbance to an environmental resource;
6. Construction or placement of minor structures accessory to existing facilities;
7. Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
8. Demolition of structures, except those structures located on any historic site as designated in the national register or Hawai'i register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or Chapter 6E, HRS;
9. Zoning variances except shoreline setback variances;
10. Continuing administrative activities including, but not limited to, purchase of supplies and personnel related actions; and
11. 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 that previously existing, and for which the legislature has appropriated or otherwise authorized funding.

### 3.2 Exemption Lists

Each agency is required by rule to develop a list of specific types of actions it may perform that fall within the 11 classes. The lists must be consistent with both the letter and intent expressed in the 11 classes and Chapter 343. The agencies must submit such a list and periodic amendments to the Environmental Council (EC or Council) for review and concurrence. An agency's exemption list helps determine whether to declare routine actions exempt.

### 3.3 Exempted Actions

Each proposed exempted action must be reviewed for potential environmental impacts. An agency may declare an action exempt from the EA/ EIS requirements if after project analysis and consultation, an agency finds that an action will have minimal or no significant environmental effects.

Prior to declaring an action exempt the agency must obtain advice from "other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption." Section 11-200-8(a), HAR.

The proposing agency and the approving agency sign the declaration and keep it on file. Each agency must maintain records of actions that it has found to be exempt and shall produce those records for review upon request.

"All exemptions under the classes in this section 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."

*Section 11-200-8 (b), HAR*





## 4.0 Environmental Review Process

If a proposed action is subject to the Chapter 343 process (and is not determined to be exempt) the environmental review process typically begins with the development of a draft Environmental Assessment (EA). An EA is an informational document prepared by the proposing agency or the private applicant and used to evaluate the potential environmental impacts of a proposed action and determine if an EIS is required. After the draft EA has been finalized and public comments responded to, the agency proposing or approving the action determines if any “significant” environmental impacts are anticipated.

If the agency determines that the project will not have a significant impact, it issues a finding of no significant impact (FONSI). With the notice of this finding, the 30 day legal challenge period begins and the agency or applicant may proceed to the permitting process.

If the agency determines that the project may have a significant impact, a more detailed environmental impact statement (EIS) must be prepared. The decision to prepare an EIS can be made either at the initial planning stage or after reviewing an EA.



## 4.1 Significance Criteria

In most cases, an agency determines that an action may have a significant impact on the environment if it meets any of the following criteria:

1. Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
2. Curtails the range of beneficial uses of the environment;
3. Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
4. Substantially affects the economic or social welfare of the community or State;
5. Substantially affects public health;
6. Involves substantial secondary impacts, such as population changes or effects on public facilities;
7. Involves a substantial degradation of environmental quality;
8. Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
9. Substantially affects a rare, threatened, or endangered species, or its habitat;
10. Detrimentally affects air or water quality or ambient noise levels;
11. Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal waters;
12. Substantially affects scenic vistas and view planes identified in county or state plans or studies; or
13. Requires substantial energy consumption



## 5.0 Environmental Assessments

For actions that trigger Chapter 343, HRS review but are not declared exempt, an EA is required (unless the agency, using its judgment and expertise, determines that an environmental impact statement (EIS) is required at the outset). The analysis within an EA is used to determine whether the impact on the environment will be significant enough to warrant the preparation of a full EIS or will be used to declare a Finding of No Significant Impact (FONSI) thus clearing the HEPA process.

### 5.1 Applicant or Agency Action?

The HEPA process is divided into two separate procedural tracks: Applicant and Agency Actions.

**5.1.1 Applicant Actions** are those initiated by a private party - HRS §343-5 (e).

For **Applicant Actions**, identify the applicant and approving agency. The approving agency oversees the preparation of an EA and determines if the impacts of a proposed action are significant enough to warrant the preparation of an EIS or issue a FONSI.

The “approving agency” is an agency that issues an approval prior to actual implementation of an action and that agrees to process the HEPA review for the applicant’s proposed action. For applicant actions, this is the case for both EA and EIS determinations.

**5.1.2 Agency Actions** are those proposed by a government agency - HRS §343-5 (b).

For **Agency Actions**, a government agency is proposing the project, submitting the EA, and making the determination. That is, the proposing and submitting agency is the same as the approving agency.

*Please note that in the event that the proposing agency determines that a full EIS is required the entity that determines the acceptability of the subsequent FEIS is termed the "accepting authority." The accepting authority is either the Governor or the County Mayor.*

If more than one agency has an interest or responsibility, then the one with the greatest responsibility for overseeing the proposed activity and/or will issue the major permit or approval should be the lead agency. If there is no agreement on who will lead, OEQC is empowered to select a single lead agency to process an environmental review. This is to ensure that a single document will meet the requirements of all the agencies involved in a project’s approval.

## 5.2 Preparing an Environmental Assessment

The EA should be made understandable to the general public using plain language, illustrations, and photographs. The comprehensiveness of the EA should be proportional to the potential effects of the action. It does not need to be exhaustive, but should provide enough information for the agency to evaluate the potential effects. The following sections describe the required minimum content for an EA, as prescribed in Section 11-200-10, HAR.

### 5.3 EA Content Requirements:

1. Identification of applicant or proposing agency;
2. Identification of approving agency, if applicable;
3. Identification of agencies, citizen groups, and individuals consulted in making the assessment;
4. General description of the action's technical, economic, social 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, or United States Geological Survey topographic maps;
6. Identification and summary of impacts and alternatives considered;
7. Proposed mitigation measures;
8. Anticipated determination for DEAs or agency determination for FEAs;
9. Findings and reasons supporting the agency determination or anticipated determination;
10. List of all permits and approvals (State, federal, county) required; and
11. Written comments and responses to the comments under the early consultation provisions and statutory public review periods.

EAs also must assess any adverse effects on cultural resources or traditional cultural practices.

As it is critical to incorporate an imminent rise in sea level into plans for future development, sea level rise and other climate change impacts should also be considered when drafting an EA.





## 6.0 Environmental Impact Statements

An EIS is a disclosure document that analyzes the effects of a proposed project or program on the environment in terms of direct, indirect and cumulative impacts. When examining the potential environmental impacts of proposed actions, the EIS is a more complex screening tool than the EA.

This in-depth study discusses alternative methods, modes or designs of the proposed action, and formulates mitigation to eliminate, reduce, and rectify adverse impacts of the proposed action.

HEPA directs that in cases where an EIS is required, the preparing party (the proposing agency for agency actions, or the applicant for applicant actions) must prepare the EIS, submit it for review and comments, and revise it, while taking into account all critiques and responses. As such, an EIS is more involved - the entire process of consultation, research, dialogue, document preparation and review. The EIS must be written in plain language to allow public understanding of its content.

### 6.1 EIS Process

At each step in the process, the EIS documents (EISPN, DEIS, and FEIS) must be submitted to OEQC for publication in *The Environmental Notice*.

- An EIS may begin with an FEA or bypass the preparation of an EA process completely and proceed to the EIS Preparation Notice (EISPN) that undergoes a 30-day comment period. The consultation process of the EISPN affords agencies, organizations and individuals an opportunity to request to become a consulted party in the preparation of the EIS.
- Next, the study is compiled and printed as a Draft Environmental Impact Statement (DEIS). The DEIS must include copies of comments received and responses sent for the FEA/EISPN or the Act 172-2012 EISPN during the 30-day comment period. The EIS content requirements are provided in Part 6.2 of this guide.
- The DEIS is circulated to consulted parties with a 45-day public comment period. The applicant or approving agency must respond to the comments received during the DEIS public review period in a point-by-point manner. After comments have been received and responded to, the DEIS is finalized with updated information and copies of comments received and responses.
- The final document (FEIS) must be accepted by the accepting authority as complete and technically adequate before the proposed project can be implemented. The acceptance of an FEIS may be challenged.
- Aggrieved parties have 60 days from notification of acceptance/ non acceptance determination in *The Environmental Notice* to challenge the acceptability of the final document in court.

For [agency actions](#), the accepting authority for an EIS on proposed state actions is the governor, and for county actions, the mayor.

For [applicant actions](#), the accepting authority is a state or county agency with the power to grant discretionary permits on the project.

*Please note that for applicant actions, non-acceptance of an applicant's FEIS by the approving agency is grounds for administrative appeal to the Environmental Council. The applicant may choose not to appeal to the Council, and simply prepare and submit a revised DEIS addressing the deficiencies that led to non-acceptance.*

## 6.2 EIS Content Requirements

Section 11-200-17, HAR, prescribes the required contents of a DEIS, while Section 11-200-18, HAR, prescribes the contents of a FEIS.

The rules that govern the EIS process require at least the following elements:

- A concise summary and table of contents;
- A statement of purpose for the project;
- A detailed project description including maps, technical data, economic and cultural effects and historical perspective;
- An analysis of alternatives to the proposed project and an explanation why the alternatives were rejected;
- A description of the environmental setting;
- A statement of the relationship of the proposed action to land use plans, policies and controls for the affected area;
- A description of the probable impacts of the project including the direct, indirect and cumulative impacts, as well as impacts on both the natural and human environments;
- A description of the relationship between short-term uses of environmental resources and long-term productivity (sustainability analysis);
- A statement of the unavoidable environmental impacts caused by the project and a rationale for proceeding with the project in light of these impacts;
- A consideration of all mitigation measures proposed to avoid, minimize, rectify, or reduce the project's adverse impacts;
- A summary of unresolved issues and a discussion of how such issues will be resolved
- A listing of all agencies, organizations and individuals consulted during the preparation of the document; and
- Reproduction of all substantive comments received during the study process and the responses to those comments.

EISs also must disclose any adverse effects on cultural resources or traditional cultural practices.

As it is critical to incorporate an imminent rise in sea level and other climate change effects into plans for future development, these impacts should also be considered when drafting an EIS.

### 6.3 Distribution

The agency or applicant shall distribute the disclosure document to other agencies having jurisdiction or expertise as well as to citizen groups and individuals that the proposing agency reasonably believes to be affected. The agency or applicant shall deposit one copy to the nearest state library in each county in which the proposed action is to occur.

In the EIS process there are mandatory requirements to ensure the disclosure document is distributed and reviewed by agencies, organizations and individuals in a timely manner. DEIS and FEIS submissions (to OEQC and to the accepting authority or approving agency) should be accompanied by a distribution list identifying the recipients of the EIS on or before the start of the 45-day comment period.

OEQC then verifies the accuracy of the distribution list. Verification by OEQC allows the proposing agency or applicant to distribute the document to those on the list (which includes consulted parties).

OEQC recommends that lists be examined in advance, with the understanding that additional requests for documents may be received after the 45-day comment period. The proposing agency or applicant should inform the OEQC of any additions as soon as possible.

To avoid unnecessary printing costs, OEQC recommends contacting the parties identified in the distribution matrix to discuss whether a hard copy or electronic copy of the EIS is preferred.



## 6.4 Supplemental Environmental Impact Statements

HEPA provides that acceptance of an EIS satisfies HEPA's requirements and no further EIS is required for that action. Section 343-5(i), HRS, Section 11-200-26, HAR, in contrast requires that no further EIS is required unless the action has substantively changed "in size, scope, intensity, use, location, or timing, among other things." The rules go on to explain that if the action has changed and the change may have a "significant effect," then the EIS is no longer valid and a supplemental is required.

The Hawaii Supreme Court applied Section 11-200-26, HAR as a two-step process in *Unite Here! Local 5 v. City and County of Honolulu*, 123 Hawaii 150, 231 P.3d 423 (2010). The court first determined that the timing of the action changed. The court then considered whether a change in timing may have a significant effect. The term "may have a significant effect" applies when the record "raises substantial questions" regarding whether the project will likely have a significant effect on the environment.

A supplemental EIS should also be prepared "when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with." Section 11-200-17, HAR.

(Note that the application of Section 11-200-27 is disputed. Some interpretations of this section permit consideration of new circumstances or evidence only if the project has also changed in size, scope, location, intensity, use, or timing. The Hawaii Supreme Court did not address whether a supplemental EIS is required when there is no change in the action's size, scope, location, intensity, use or timing.)



## 7.0 Direct to EIS Law 2012

### 7.1 Overview:

- In an effort to streamline the Chapter 343, HRS process and increase efficiency, the Hawai'i State Legislature passed Act 172 in 2012.
- Act 172-2012 allows agencies to bypass the EA and proceed directly to the more comprehensive EIS.
- This determination is based on the agency's judgment and experience with similar actions after applying the significance criteria in Section 11-200-12 HAR.
- This amendment was added to Sections 343-5(b) (agency actions) and 343-5(e) (applicant actions).

### 7.2 Purpose:

Many stakeholders were frustrated that the two-step review process, with an EA to determine if an EIS is needed, can be unnecessarily burdensome and costly for applicants and agencies with projects likely to have significant impacts. The new law allows agencies to exercise their discretion for determining the appropriate level of review based on their experience with similar actions.

This approach is modeled after NEPA which allows an agency to bypass the EA step and proceed directly to an EIS (CEQ Regulations, 40 C.F.R. 1508.22) if the agency determines that significant effects may or will occur. Under NEPA this is a Notice of Intent (NOI).

Although this new law reduces duplication, preparation time and cost, it also cuts opportunities for public participation when the agency chooses not to prepare an EA, but to proceed directly to the EIS preparation notice.

### 7.3 Direct to EIS Consultation:

Because the direct to EIS option omits public participation in the EA process, it is important for agencies and preparers to undertake comprehensive consultation prior to and during the preparation of the DEIS.

Consultation is the most important element of the HEPA process. At the earliest practicable time, an agency is required to consult (or direct an applicant to consult) with the community, other agencies, organizations and individuals that may have an interest or will be affected by the proposed activity (Section 11-200-9, HRS).

*\* Content requirements for a HEPA Direct to EIS, Act 172-2012 Environmental Impact Statement Preparation Notice (EISPN) differ from the NEPA Notice of Intent (NOI). The NOI is published in the Federal Register, and provides some basic information on the proposed action in preparation for the scoping process.*



## 7.4 Act 172-2012 EISPN Content Requirements:

In the absence of an Environmental Assessment, the EISPN under the new law should at a minimum indicate in a concise manner the following:

1. Identification of applicant or proposing agency;
2. Identification of accepting authority;
3. Brief description of proposed action;
4. Determination;
5. Reasons supporting determination; and
6. Name, address, and phone number of contact person for further information

These elements are prescribed in FEA notice of determination requirements, Section 11-200-11.2 (c) HAR

OEQC recommends that the following elements also be addressed depending on the project specifics:

1. Discussion of the purpose and need of the action. Why is the action being proposed? What and whose need does it serve?
2. Description of the receiving environment. Describe the site. Is it considered a sensitive area or environment? Include any impacts of the receiving environment.
3. What is the planning horizon for the action? What other actions are projected in the reasonably foreseeable future? Have alternatives to the proposed action been considered?
4. Identify and consult with all parties affected by the proposed action both directly and indirectly. What agencies will issue discretionary/ministerial approvals in the future for the action? What community members will be affected?
5. Finally the agency should clearly identify what elements of the significance criteria influenced their decision to precede directly to the EIS preparation. The assessment of significance is integral to the environmental review process. The intent of the 2012 Legislature is to streamline the HEPA process, and it is not intended for proponents to “just do the EIS” instead of the more measured process.



## 8.0 Cumulative Effects

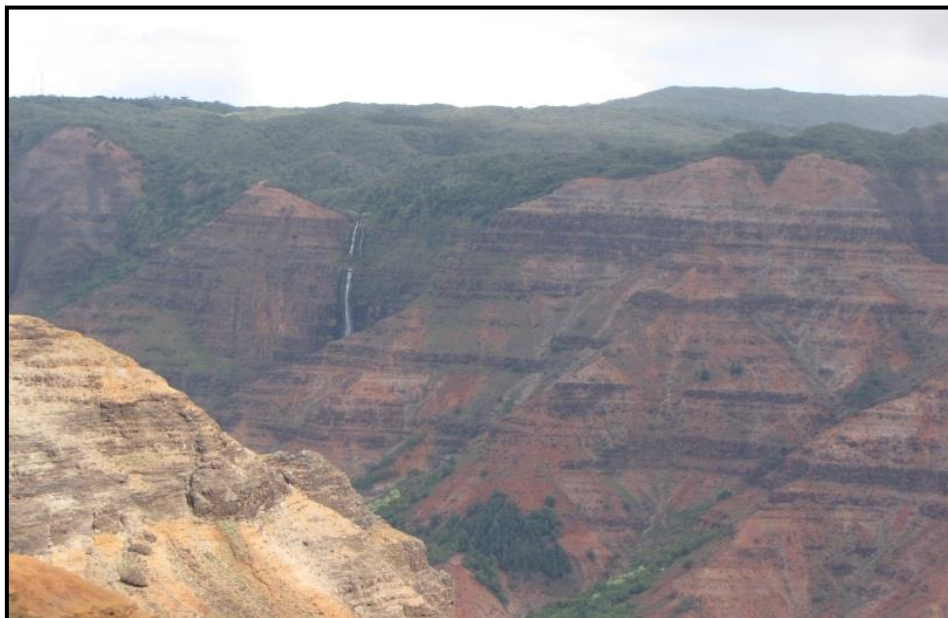
When considering the significance of potential environmental effects, the proposing or approving agency must consider the sum of the effects on the quality of the environment. That same agency must evaluate the cumulative effects of a proposed action including the expected direct and indirect consequences, as well as short-term and long-term effects of the proposed action.

### 8.1 Phased Actions - Project Segmentation

A group of actions proposed by an agency or an applicant shall be treated as a single action when:

- A. The component actions are phases or increments of a larger total undertaking;
- B. An individual project is a necessary precedent for a larger project;
- C. An individual project represents a commitment to a larger project;
- D. The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole (Section 11-200-7, HAR).

A proposed action must be described in its entirety and cannot be broken up into component parts, which if each is taken separately, may have minimal impact on the environment. Segmenting a project generally is forbidden. If a project includes a later phase that cannot be fully described in the current EA because it will be implemented in the distant future (as opposed to the "reasonably foreseeable future"), the EA should disclose as much detail as possible about the future phase. Should the future phase of such a project eventually be proposed, a new environmental review document will be required at that time.



## 9.0 Environmental Notice

HEPA requires (Section 343-3, HRS) that OEQC publish a periodic bulletin, now called *The Environmental Notice* §343-3. *The Environmental Notice* lists the availability of DEAs, FEAs, FONSI, EISPNs, DEISs, FEISs, and notices of acceptance. OEQC must publish notice of certain plans/processes relating to incidental take licenses, habitat conservation plans, or safe harbor agreements under the federal Endangered Species Act, and of any application for the registration of land by accretion. As a courtesy, it also lists announcements of environmental concern from other agencies.

The Environmental Notice is published on the 8th and the 23rd of each month and is distributed electronically to state libraries, government agencies, and interested members of the public, consultants and community groups.

## 10.0 Notices of Determination

The notices of determination for environmental assessments and environmental impact statements must be submitted to OEQC on agency letterhead. They are required to contain the following elements (HAR 11-200-11.1(c)):

- A. Identification of applicant or proposing agency (include in OEQC Publication Form)
- B. Identification of accepting authority or approving agency (include in OEQC Publication Form)
- C. A description of proposed action (include in OEQC Publication Form)
- D. Determination (include in body of letter to OEQC)
- E. Reasons supporting determination (include in body of letter to OEQC)
- F. Name, address, and phone number of contact person for further information (include in body of letter). In the body of the letter, please make reference to the supporting documentation used to make the determination (i.e., draft EA or final EA), OEQC publication form, etc.



## 11.0 Environmental Review Entities and Laws

### 11.1 Environmental Review Agencies

The main State government entities that work to implement Hawai'i's environmental reviews are the Office of Environmental Quality Control and the Environmental Council:

1. The Office of Environmental Quality Control (OEQC) advises the Governor on all matters relating to environmental quality control and is responsible for implementing various portions of Chapter 343. The OEQC Director is also responsible for directing the attention of the university community and the general public to environmental and ecological issues by funding research projects and providing environmental education; proposing and encouraging legislation to preserve and protect environmental resources; recommending long-range environmental programs; and offering advice to private citizens and governmental agencies on matters relating to environmental quality control. OEQC reviews all documents pursuant to the EIS process and informs the public of proposed actions through the semimonthly publication known as The Environmental Notice.
2. The Environmental Council has 15 members appointed by the governor and confirmed by the legislature for four year terms. The Council serves as a liaison between the director of OEQC and the general public by soliciting information, opinions, complaints and recommendations concerning ecology and environmental quality. The Council is responsible for the adoption, amendment and repeal of rules under Chapter 343, hears any appeals from applicants who wish to challenge the nonacceptance of an EIS, monitors agency progress in meeting state environmental goals and policies and publishes an annual report, with recommendations for enhancing the quality of Hawai'i's environment.
3. The Environmental Center of the University of Hawaii functions to stimulate, expand, and coordinate education, research, and service efforts of the University relating to ecology, natural resources, and environmental quality. The Environmental Center also reviews EAs and EISs and submits comments and suggestions when appropriate during the environmental review process.

#### ***2013 Changes for the Environmental Center***

The Environmental Center has merged with the Water Resources Research Center (WRRC). WRRC's Environmental Assessment and Protection Division are to continue to fulfill the university's Chapter 341 mandate through the coordinated efforts of its divisions and programs.

## **11.2 Environmental Impact Statements, Chapter 343, Hawai‘i Revised Statutes**

Adopted in 1974, and patterned after the National Environmental Policy Act, Chapter 343 provides the statutory basis for developing and processing environmental assessments and environmental impact statements. This “EIS Law” requires that systematic consideration be given to the environmental and social consequences (in addition to the economic consequences) of proposed state, county or private actions.

## **11.3 Environmental Impact Statement Rules, Chapter 200, Hawai‘i Administrative Rules**

The administrative rules implementing Chapter 343, HRS, are contained in Title 11, Chapter 200. Chapter 200 prescribes whom the law applies to, how it is implemented, and what the specific requirements are, in a step-by-step format. These rules provide agencies and applicants with procedures, specifications, contents and criteria relating to environmental assessment and environmental impact statements.

## **11.4 Environmental Policy Act, Chapter 344 Hawai‘i Revised Statutes**

Also adopted in 1974, Chapter 344 established Hawai‘i’s State Environmental Policy to encourage the conservation of its natural resources and the enhancement of its quality of life. Specific policy guidelines are set forth in the law for implementation by state and county agencies in their planning and decision making.



## 12.0 National Environmental Policy Act

The National Environmental Policy Act (NEPA) became federal law in 1970. NEPA provides a framework for federal agencies to review impacts prior to taking actions. In enacting NEPA, Congress recognized that nearly all federal activities affect the environment in some way and mandated that before federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment.

A proposed project that includes the use of federal lands or funds may require the preparation of a federal EIS. Often, agencies need to comply with the provisions of NEPA, in addition to Chapter 343, HRS.

Section 343-5(H), HRS allows cooperation between state and federal agencies to the fullest extent.

It's important to note, in comparing the state and federal process that an action exempt from review under the NEPA, does not automatically constitute an exemption under HEPA. The federal exemption may be considered in the state or county agency determination, however the state and local agencies are still responsible for compliance with HEPA.

It is important to note, in comparing the two processes that both federal and state agencies that frequently Preparing a joint HEPA-NEPA document that satisfies both laws can be difficult as the content requirements, statutory public comment period and supplemental EIS requirements can differ. Often, the agency resorts to producing tow documents with similar information but different structures. Federal process examines a proposal and results in one of three different determinations, namely a Categorical Exclusion (CE), an Environmental Assessment (EA) that can result in a Finding of No Significant Impact (FONSI) or Notice of Intent (NOI), or a more comprehensive Environmental Impact Statement (EIS).

<b>HEPA</b>	<b>NEPA</b>
Separates the disclosure process and the implementation (or permitting) processes	Does not draw a distinct boundary between the disclosure process and the implementation (or permitting) processes
Due to the separation of the disclosure process from permitting / implementation process, multiple agencies are involved	Constitutes a process that is under the oversight of one federal agency from start to finish
Review triggered by nine prescribed factors	Review triggered by "major" federal action significantly affecting human environment

## Glossary of Terms

**Acceptance** – A formal determination that the document required to be filed pursuant to Chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement as prescribed by Section 11-200-23, HAR. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with Chapter 343, HRS.

**Accepting Authority** – The final official or agency that determines the acceptability of the EIS document.

**Action** – Any program or project to be initiated by any agency or applicant.

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

**Agency actions** – Refers to those proposed by a government agency. The agency proposing the action is responsible for preparing an EA, reviewing the document, submitting the document to OEQC for publication, and issuing a notice of determination on the need for an EIS.

**Applicant** – Any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action. Under HEPA, an applicant cannot be an agency, nor can an agency be an applicant. This mutual exclusivity establishes an important boundary in HEPA and serves to divide the universe of actions in one of two different areas: applicant actions (see Section 343-5(c), HRS) or agency actions (see Section 343-5 (b), HRS). This is described further in Section 1.10.1.

**Applicant actions** – Refers to those that are initiated by a private party and “triggers” an environmental review. The agency with the authority to grant approval of the project requires the applicant to prepare an EA prior to permitting its development.

**Approving agency** – An agency that issues an approval prior to actual implementation of an action and determines the need for an EA or an EIS. The approving agency may also be an accepting authority for an applicant’s final EIS>

**Draft Environmental Assessment (DEA)** – The environmental assessment 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) determination.

**Draft Environmental Impact Statement (DEIS)** – The initial statement filed for public review

**Discretionary Consent** – A consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by issuing agency, as distinguished from ministerial consent.

**Environmental Assessment (EA)** – An informational review document prepared by the proposing agency or the private applicant and used to evaluate the possible environmental effects of a proposed action.

**Environmental Impact Statement (EIS)** – 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.

**Environmental Impact Statement Preparation Notice (EISPN)** – A determination based on an EA or at the outset when an agency using its judgment and expertise under Act 172-2012 determines that an EIS is required because the subject action may have a significant effect on the environment and therefore, will require the preparation of an EIS.

**Exemption** – Although a project may touch one of the above triggers, it does not necessarily require the preparation of an environmental review document. Certain classes of activities that are routine and minor in scope are exempt from the EA requirement.

**Final Environmental Assessment (FEA)** – Either the EA submitted by a proposing agency or an approving agency following the public review and comment period for the DEA and in support of either a FONSI or EISPN.

**Final Environmental Impact Statement (FEIS)** – The document that has incorporated the public's comments and responses to those comments. It shall be evaluated for acceptability by the respective accepting authority.

**Finding of No Significant Impact (FONSI)** – A determination by an agency based on an EA that an action not otherwise exempt does not have the potential for a significant effect on the environment and therefore does not require the preparation of an EIS. A FONSI is required prior to implementing or approving the action.

**Notice of Determination (FONSIs and Prep Notices)** – issued by an agency and accompanies a FEA. The determination states that the action will either have no significant impact (FONSI), or may have a significant impact. If a FONSI is issued, the project may proceed without further study. Without a FONSI determination, an agency must issue an EISPN stating that a full EIS will be required.

**Office of Environmental Quality Control (OEQC)** – Established in 1970, its goal is to maintain the optimum quality of the State's environment by implementing Chapter 343, HRS, Environmental Impact Statements.

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

**Proposing agency** – Responsible for preparing an EA, reviewing the document, submitting the document to OEQC for publication, and issuing a notice of determination on the need for an EIS.

**Significance** - Under HEPA, it has been operationally defined in the administrative rules (Section 11-200-12, HAR) that set forth the thirteen criteria that a proposing agency or an approving agency must use in determining whether a proposed action has a significant effect on the environment.

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