

A GUIDEBOOK
FOR
THE HAWAII STATE
ENVIRONMENTAL IMPACT REVIEW PROCESS

Includes:

ENVIRONMENTAL IMPACT STATEMENT RULES

Chapter 343, Hawaii Revised Statutes
Chapter 200, Title 11, Administrative Rules

This Guidebook was prepared by
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FORWARD

Hawaii's Environmental Impact Statement (EIS) process was developed in 1974 to insure that systematic consideration is given to the environmental consequences of actions proposed within our state. The EIS process is defined by Chapter 343, HRS, and its rules, Chapter 200 - Title 11, and offers many opportunities for the prevention of environmental degradation through increased citizen involvement and enlightened decision making.

While some projects are given great public scrutiny, in many cases, the average citizen may be unaware of the opportunities presented in the EIS process to review and help effect the environmental consequences of a project proposed for his community.

This guidebook is a summary presentation of the EIS process and how it works. Reference number (11-200-12) following subject headings refer directly to the appropriate section of the EIS rules (provided in Appendix D) should you desire further clarification of a subject. Changes are made in the laws and rules from time to time, and users are advised to check periodically with OEQC to see if an updated edition of this guidebook has been issued.

Informed decision making and increased public participation are important goals of the EIS process. We hope this guidebook brings us closer to meeting those goals.

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 This Guide is complete.
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ORIGINS OF THE ENVIRONMENTAL REVIEW PROCESS

The environmental movement of the late sixties focused public attention on the pressing need to safeguard the quality of our environment. The United States Congress responded by enacting the National Environmental Policy Act (NEPA) in 1969. This law requires all federal agencies to analyze the environmental consequences of their proposed actions and to prepare a document disclosing this analysis for public and government review. This document is known as an Environmental Assessment (EA) or, in a more developed detailed form, an Environmental Impact Statement (EIS).

Many states have since enacted their own environmental policy acts to analyze the environmental impacts of governmental actions and those of private developers within their state. Hawaii enacted its environmental review process in 1974 and patterned it after the NEPA process.

State and federal laws requiring environmental impact analysis offer major opportunities for the prevention of environmental degradation, improved governmental decision making and increased citizen involvement in the decision making process.

HAWAII'S ENVIRONMENTAL REVIEW PROCESS

In Hawaii, environmental impact analysis is required for hundreds of government and private projects every year. There are many laws within the Federal, State and County jurisdictions in Hawaii that may require or "trigger" the environmental review process, such as the State Land Use Law, the Hawaii Coastal Zone Management Act and county general plans as well as the State EIS law itself. The requirements of the environmental review process are defined in this law and is the focus of this guidebook. (For information on other related environmental review laws, see Section XI of this Guidebook).

Environmental Impact Statement Law (Chapter 343, HRS)

Adopted in 1974, and patterned after NEPA requirements, this law provides for a step-by-step review and assessment process that gives systematic consideration to the environmental consequences of proposed state, county, or private actions. The administrative rules of this law, (Chapter 200, Title 11), delineate who this law applies to, how it is implemented, and what the specific requirements are. This guidebook summarizes the administrative rules of Chapter 343, HRS. (Chapter 343, HRS is provided in Appendix B. EIS rules Chapter 200, Title 11 are provided in Appendix D.)

Environmental Policy Act (Chapter 344, HRS)

Also adopted in 1974, this law established Hawaii's State Environmental Policy to encourage the conservation of its natural resources and the enhancement its quality of life. Specific policy guidelines are delineated in the law for consideration by state and county agencies in their planning and decision making process. (Chapter 344, HRS is provided as Appendix C.)

Hawaii State Plan (Chapter 226, HRS)

Enacted in 1978, this law established a system of statewide directions to guide and coordinate the long-range future development of the State of Hawaii. The Hawaii State Plan presents the goals, objectives and policies of the State and delineates priority

guidelines for twelve major areas of statewide concern. These guidelines were used in the formulation of twelve State Functional Plans which provide detailed implementation of the State Plan through specific programs and activities carried out by various appropriate state agencies.

Environmental Quality Control Act (Chapter 341, HRS)

Adopted in 1970, this law created three new entities within the structure of state government to stimulate, expand, and coordinate efforts to maintain the quality of Hawaii's environment. They are:

The Environmental Center:

The function of the University of Hawaii's Environmental Center is to stimulate, expand, and coordinate education, research, and service efforts of the university relating to ecology, natural resources, and environmental quality. The Environmental Center reviews environmental impact statements and submits comments and suggestions when appropriate during the EIS process.

The Environmental Council:

The Environmental Council is comprised of fifteen members appointed by the governor and confirmed by the legislature for a term of four years. The Council is responsible for monitoring government agencies, to insure that environmental goals and policies are being achieved. The Council also delegates authority pursuant to the effective administration of the EIS law and its rules. For instance, the Environmental Council hears appeals from project developers who wish to challenge the non-acceptance of an EIS.

The Office of Environmental Quality Control (OEQC):

The Office of Environmental Quality Control (OEQC) is responsible for implementing the EIS law and serves in an advisory capacity on all matters relating to environmental quality control. OEQC coordinates all issues concerning environmental quality and administers the rules of the EIS law for state government agencies. OEQC receives, distributes, and reviews all documents pursuant to the EIS process and informs the public of proposed actions through its semi-monthly Bulletin.

OEQC Bulletin

All public notification of proposed actions subject to EIS law is done through the OEQC Bulletin. The Bulletin is distributed throughout the state on a semimonthly basis to libraries, government agencies, interested members of the public, consultants and conservation groups. Anyone wishing to receive the OEQC Bulletin on a regular basis, may do so by calling OEQC at 548-6915 and requesting to be put on their mailing list.

Publication Deadlines For Notices

The OEQC Bulletin is published on the 8th and the 23rd of each month. Notices of determination must be submitted five working days prior to a publication date in order to be published in that issue. Draft or Final EIS's must be submitted three working days prior to publication.

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ACTIONS SUBJECT TO EIS LAW (11-200-5)

Hawaii's EIS Law, Chapter 343, HRS, is applicable to a proposed project, program, or action that fulfills any one of the following criteria:

- o Uses State or County lands or funds
- o Is in a State conservation district
- o Is the reclassification of conservation district land
- o Is in a shoreline setback area (20 to 40 feet from the shore)
- o Is located in Waikiki
- o Is within a listed historic site
- o Requires an amendment to a County land use plan
- o Is the construction of new, or the modification of existing, helicopter facilities

It should be noted that many private projects, which may have significant environmental effects, do not fall under the above criteria. They may, however, be subject to environmental review requirements of other laws or permitting process. (See Section 11 of this Guidebook, Related Environmental Review Laws.)

If an action, or project, is subject to EIS law, it must undergo the EIS review process before any decision making can occur. Specific documentation disclosing pertinent information must be prepared and "accepted" by an approving agency as verification that all requirements of the review process have been adequately fulfilled.

For purposes of this law, actions which utilize State or County lands or funds are categorized as Agency Actions. Public works projects, such as roads or airports, are examples of Agency Actions. An action proposed by a private developer is considered an Applicant Action. A privately developed hydroelectric plant proposed on Conservation District land is an example of an Applicant Action.

Agency Actions

For Agency Actions, the agency proposing the action is responsible for implementing the EIS process, preparing the necessary documentation for review, and "accepting" it as adequate fulfillment of the requirements of Chapter 343, HRS. The final accepting authority for Agency Actions lies with the Governor for State Actions and with the respective Mayor for County Actions. If the proposed action involves both State and County lands or funds, the Governor is the final accepting authority.

Applicant Actions

For Applicant Actions, the agency who receives the applicant's initial request for project approval (such as a Special Land Use permit) becomes the accepting authority for that action and is responsible for implementing the EIS process and fulfilling the requirements of Chapter 343, HRS before any permitting decisions are made.

If an applicant should simultaneously request approvals from two or more agencies and these agencies are unable to agree as to which agency should be the accepting authority, the Office of Environmental Quality Control (OEQC) will determine the responsible agency by considering the following factors:

- (1) The agency with the greatest responsibility for supervising or approving the action as a whole;
- (2) The agency that can most adequately fulfill the requirements of Chapter 343, HRS, and Chapter 200, Title 11, Administrative Rules.
- (3) The agency that has special expertise or access to information; and
- (4) The extent of participation of each agency in the action.

Exemptions (11-200-8)

Specific exemptions are provided in the EIS law to waive the environmental review process for government undertakings of a minor or routine nature. Exempt classes of action for various agencies are approved by the Environmental Council and does not require the filing of an environmental assessment. If, however, any normally insignificant exempt action were proposed in a particularly sensitive environment, or if successive exempt actions could have a cumulative significant impact, the exempt status of the proposed action is deemed invalid.

THE EIS PROCESS - A BRIEF OVERVIEW

The following overview provides a general understanding of how the EIS process works. A more detailed explanation of each step of the process is given in the next section.

A SUMMARY OF THE EIS PROCESS

If a proposed action is subject to the EIS law, the environmental review process begins with the development of an Environmental Assessment. This is an informational document prepared by the proposing agency (for government actions) or the approving agency (for private actions) and is used to evaluate the possible environmental effects of a proposed action. It must give a detailed description of the proposed action or project and describe and evaluate its overall and cumulative potential impacts, all alternatives considered, and any measures proposed to minimize potential impacts. Agencies should encourage early assessment of the project and open consultation to insure that all pertinent issues are addressed.

The Environmental Assessment

After the Environmental Assessment has been prepared, the agency proposing or approving the action reviews the assessment and determines if there are potential "significance" environmental impacts anticipated. The criteria used for determining "significance" is specific and detailed later in this guidebook. If significant environmental impacts are found, the development of an Environmental Impact Statement (EIS) is required. If no significant impacts are anticipated, an EIS is not required.

Agency review and determination of 'significant' effects

If the accepting agency determines that the proposed project or action may have a significant impact on the environment, it files an EIS Preparation Notice with OEQC, who in turn publishes the notice in the next OEQC Bulletin. Publication of this notice initiates a 30-day consultation period during which the public and interested agencies or organizations may submit written comments regarding the environmental effects of the proposed action. The proposing agency or applicant must respond in writing and address all concerns and questions before proceeding with the development of the EIS. This 30-day consultation period can be extended an additional 30 days to accommodate further consultation.

EIS Preparation Notice

30-day Consultation Period for public and agency input

If the proposing or approving agency determines that the Environmental Assessment indicates the proposed action will have no significant effect on the environment, it files a notice called a Negative Declaration with OEQC, who publishes the notice in their next Bulletin. Publication of this notice initiates a 60-day period during which an aggrieved party may challenge the determination of a Negative Declaration through litigation. If the determination is not challenged within this period, the proposed project will proceed through the permitting process without the requirement of an EIS.

A Negative Declaration is required

60-day Challenge Period

(Note: Fewer than 10% of all proposed projects subject to State EIS law prepare Environmental Impact Statements)

The Environmental Impact Statement is a two-phased document which assess the proposed project through a lengthy process of research, discussion, preparation and review. It must, at a minimum, identify environmental concerns, obtain various relevant data, conduct necessary studies, receive public input, evaluate alter-

The Environmental Impact Statement

natives, and propose measures for minimizing adverse impacts. The EIS must be structured to disclose information in a concise manner, using understandable terms.

The EIS is prepared by the proposing agency or applicant for review in two stages; initially as a Draft EIS, which is reviewed by the public and other agencies and then revised and submitted as the Final EIS.

When the initial, or Draft EIS is submitted to the accepting authority for review, a Notice of Availability is published in the OEQC Bulletin. This initiates a 45-day review period during which the public and other agencies may review the Draft EIS and submit their concerns about the proposed project in written comments to the preparers of the EIS. All comments must be responded to in writing and both comments and responses will be included in the Final EIS.

Addressing concerns and comments received during the review period, the Draft EIS is further revised into the Final EIS and then submitted to the approving authority for acceptance.

Acceptance of an EIS is required before the proposed action or project can proceed to the permitting stage. Acceptance of an EIS means that all EIS procedures have been followed and all possible identifiable environmental impacts have been disclosed. Acceptance does not indicate approval of the project or assurance that necessary permits will be issued.

Upon determining the acceptability of an EIS, the approving agency files a Notice of Acceptance or Non-Acceptance with OEQC, who published the notice in their next Bulletin. Publication of either notice initiates a 60-day challenge period during which an applicant may

The Draft EIS

A Notice of Availability initiates a 45-day Review Period for public and agency input

The Final EIS

Accepting the EIS

Notice of Acceptance or Non-Acceptance

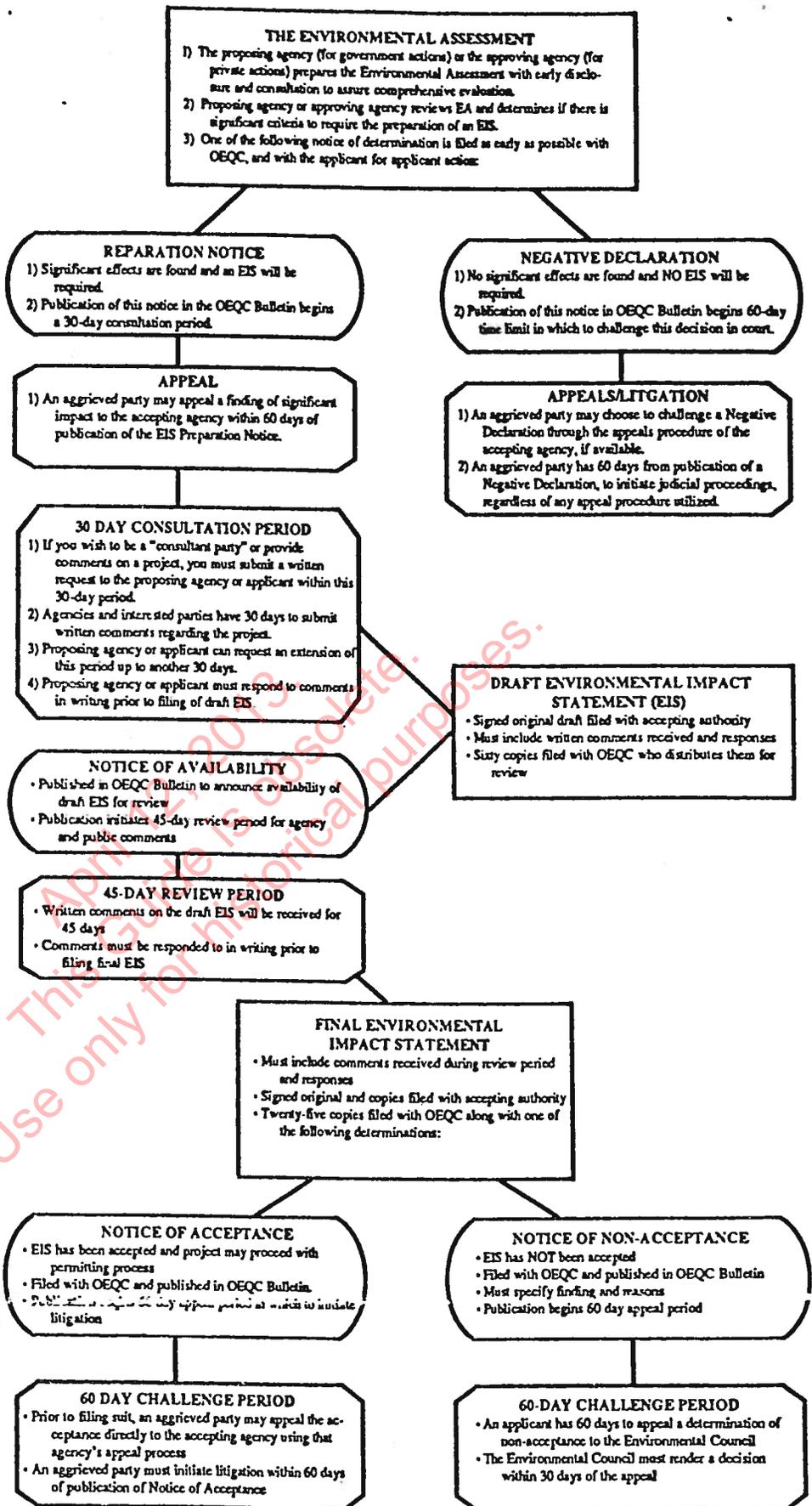
appeal a determination of non-acceptance to the Environmental Council. If an aggrieved party wishes to challenge the acceptance of an EIS, they may appeal the decision directly to the accepting agency, or file suit in circuit court within the 60-day challenge period.

If an EIS is not accepted by the approving agency, it may be amended and resubmitted again, following all the procedures of an original EIS.

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EIS PROCESS FLOWCHART

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THE ENVIRONMENTAL ASSESSMENT

The Environmental Assessment (EA) is a preliminary document prepared to determine if a particular action has potential significant environmental impacts. Based on this document, the proposing or approving agency determines whether or not an EIS will be required.

EARLY CONSULTATION (11-200-9)

During the preparation of the Environmental Assessment, the agency proposing or approving the action must consult with other agencies, who have jurisdiction or expertise, as well as with citizen groups and individuals as early as possible to insure that all pertinent issues are addressed. The assessment process must identify and evaluate the significance of all potential impacts and indicate areas which require additional study.

EA CONTENT REQUIREMENTS (11-200-10)

The Environmental Assessment must contain the following:

- o Identification of proposing agency or applicant;
- o Identification of approving agency;
- o Identification of agencies consulted in making the assessment;
- o General description of the action's technical, economic, social and environmental characteristics;
- o Summary description of the affected environment, including suitable and adequate location and site maps;
- o Identification and summary of major impacts and alternatives considered, if any;
- o Proposed mitigation measures, if any;

- o Determination by proposing or approving agency as to whether the impacts are significant enough to warrant an EIS;
- o Findings and reasons supporting the determination;
- o Agencies to be consulted in the preparation of the EIS, if applicable.

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NOTICES OF DETERMINATION (11-200-11)

After preparation and review of the environmental assessment, the proposing agency or the approving agency determines whether or not there are significant environmental impacts to warrant the preparation of an EIS. One of the following Notices of Determination, along with four copies of the EA, is then filed with OEQC as early as possible and published in the OEQC Bulletin.

NEGATIVE DECLARATION

If the approving or proposing agency determines that an EIS is not required of the proposed action, a Negative Declaration is filed and published in the OEQC Bulletin. Concerned parties who wish to challenge this determination have 60 days from the date of publication in which to institute litigation.

EIS PREPARATION NOTICE

If the approving or proposing agency determines that an action requires the preparation of an EIS, the EIS Preparation Notice is filed and published in the OEQC Bulletin. Upon publication of this notice, agencies, groups or interested parties have 30 days in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request, the approving agency or accepting authority may extend the period for comments up to another 30 days.

SIGNIFICANCE CRITERIA (11-200-12)

In developing the Environmental Assessment and in determining whether an action may have a significant impact on the environment, the agency or applicant must consider the action's every phase, its expected consequences, both primary and secondary, and its cumulative as well as short and long-term effects.

An action shall be determined to have a significant impact on the environment if it meets any one of the following criteria:

- o Involves a loss or destruction of any natural or cultural resource;
- o Curtails the range of beneficial uses of the environment;
- o Conflicts with the State's long-term goals or guidelines as expressed in Chapter 344, HRS;
- o Substantially affects the economic or social welfare of the community or state;
- o Substantially affects public health;
- o Involves substantial secondary effects, such as population changes or infrastructure demands;
- o Is individually limited but cumulatively has considerable effect on the environment, or involves a commitment to larger actions;
- o Substantially affects a rare, threatened or endangered species or its habitat; or
- o Affects an environmentally sensitive area, such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, freshwater area, or coastal waters.

THE ENVIRONMENTAL IMPACT STATEMENT (11-200-14)

The Environmental Impact Statement (EIS) is an informational document which discloses all effects that a proposed action might have on the environment and the social or economic welfare of the community. An EIS involves more than the preparation of a document, however. It involves the entire process of research, discussion, preparation of a statement and review. The EIS process must, at a minimum, identify environmental concerns, obtain various relevant data, conduct necessary studies, receive public and agency input, evaluate alternatives to the action, and propose measures for minimizing adverse impacts. The statement should essentially be a self-contained document, capable of being understood by the reader without cross-reference.

EARLY CONSULTATION (11-200-15)

Proposing agencies and applicants must consult with appropriate agencies and concerned citizens and groups early in the preparation process and not rely solely on the review process to expose environmental concerns. Preparers of the EIS must endeavor to provide a full and complete consultation process. All substantive comments from consulted parties must be responded to in writing prior to the filing of the initial or Draft EIS.

CONTENT REQUIREMENTS: DRAFT EIS (11-200-17)

The Draft EIS document must present the following elements in depth:

- o A concise summary;
- o A detailed description of the proposed action;
- o The relationship of the project to land use in the affected area;
- o Beneficial and adverse impacts on the environment, specifically detailing adverse impacts which cannot be avoided;
- o Alternatives and impacts of alternatives;

- o Ways to minimize adverse impacts;
- o The trade-offs between benefits and adverse effects;
- o A list of government agencies, other organizations, and private individuals consulted and their comments;
- o A summary of unresolved issues;
- o A list of required approvals and the status of each.

(For a detailed description of content requirements, see 11-200-17 in EIS Rules, Appendix E.)

FILING AND DISTRIBUTION: DRAFT EIS (11-200-20 & 21)

The proposing agency or applicant files the original Draft EIS with the accepting authority and sixty copies with OEQC. OEQC then publishes a Notice of Availability of the Draft EIS in the OEQC Bulletin. Distribution of the Draft EIS is made to individuals and agencies of relevant expertise for their review and comment. OEQC also provides copies of EIS to public libraries and, to the extent possible, to individuals requesting them.

AGENCY AND PUBLIC REVIEW (11-200-22)

Upon publication of a Notice of Availability of a Draft EIS in the OEQC Bulletin, a 45-day public review period begins. This provides 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. Written comments regarding the Draft EIS and its proposed action must be submitted to the approving agency or accepting authority, whichever is applicable, with a copy to OEQC and the applicant or proposing agency, within this 45-day review period in order to be considered in the assessment process.

The proposing agency or applicant will respond in writing to all comments received during this period. (See Section 10 Public Participation.) Responses to comments must include a point-by-point discussion of the validity, significance and relevance of each comment and a discussion as to how each comment was evaluated and considered in planning the proposed action. Comments and responses shall be incorporated into the Final EIS.

CONTENT REQUIREMENTS: FINAL EIS (11-200-18)

The Final EIS must incorporate all of the following:

- o Draft EIS or a revision of the Draft;
- o Comments and recommendations received on the Draft EIS;
- o List of persons, organizations, and public agencies commenting on the Draft EIS;
- o Responses of the proposing agency or applicant to significant points raised in the review and consultation process (may be in the form of a revision of or attachment to the Draft EIS), including disposition of significant environmental issues (e.g., revisions to the proposed project to mitigate anticipated effects), especially the major issues raised when the position of the proposing agency or applicant is at variance with recommendations and objections raised in the comments, plus the following:
 - o reasons specific comments and suggestions were not accepted; and
 - o important factors that warranted overriding the suggestions.

FILING AND DISTRIBUTION: FINAL EIS (11-200-20 & 21)

The proposing agency or applicant files the original Final EIS with the accepting authority and twenty-five copies with OEQC. OEQC then publishes a Notice of Availability of the Final EIS in the OEQC Bulletin. OEQC distributes copies of the Final EIS to public libraries and individuals requesting a copy for their information.

ACCEPTABILITY (11-200-23)

The law requires that an EIS must be accepted before the project can proceed. Acceptance means that all procedures have been followed, the EIS content adequately discloses all identifiable environmental impacts and all review comments have received satisfactory responses.

Acceptance of the EIS is not the same as approving the project. Approval or disapproval of a project occurs after the EIS process is completed and necessary agency permits are issued or denied.

1. FOR AGENCY ACTION:

The Governor or his authorized representative is the accepting authority whenever an action proposes the use of state lands or funds.

The Mayor or his authorized representative is the accepting authority whenever an action proposes only the use of county land or funds.

2. FOR APPLICANT ACTION:

The authority to accept a Final EIS shall rest with the agency receiving the initial request for approval. The approving agency must notify the applicant and OEQC of its decision within 30 days of the official receipt of the Final EIS. If the approving agency fails to decide within this time period, the EIS is automatically accepted.

Once a determination is made by the appropriate accepting authority, a Notice of Acceptance or Non-Acceptance is filed with the proposing agency or applicant and with OEQC who publishes it in the OEQC Bulletin. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance.

An EIS that is not accepted may be revised by the proposing agency or applicant and resubmitted. The revision must fully document the inadequacies of the EIS that was not accepted and shall completely and thoroughly discuss the changes made. All requirements for filing, distribution, review and acceptance of a revised EIS shall be the same as an original EIS. Hopefully, adequate early disclosure and open discussion will allow for all revisions to be made during the Draft EIS stage of the assessment.

APPEALS (11-200-24)

An agency or applicant may appeal the non-acceptance of an EIS to the Environmental Council within sixty days of the publication of the Notice of Non-acceptance. The Council has thirty days to make its determination, which the agency, or applicant, must abide by.

PUBLIC PARTICIPATION

The EIS law encourages public participation and views it as an integral part of the process. There are two public participation periods provided for in which citizens can become involved in a proposed action. One is the Consultation Period prior to the development of a Draft EIS, and the other is the Review Period just after the submittal of the Draft EIS. Because time limits for these periods are short, receipt of the OEQC Bulletin is vital if you are concerned about a particular project. The OEQC Bulletin can be obtained by calling OEQC at 548-6915.

Many times proposed projects generate lots of public interest. In these cases, public meeting may be held to facilitate input from the community and allow applicants and agencies to explain their project to the community at large. This is another excellent opportunity to participate and voice your concern. Public meetings are usually announced in the local newspaper.

HOW YOU CAN PARTICIPATE

By becoming involved in the EIS process, you can help to anticipate and avoid environmental problems.

- o Watch the newspaper for projects coming up in your area; find out whether or not an EIS is required.
- o If an EIS is not required and you think one should be, find out why it is not required.
- o Get on the "OEQC Bulletin" mailing list to find out about Negative Declarations, EIS Preparation Notices and EIS's available for review.
- o Request to be consulted on EIS's for projects which concern you.

HOW TO REVIEW AN EIS

The basic purpose of an EIS is to improve the quality of environmental information available to persons making decisions on projects. Therefore, in reviewing an EIS, there are a number of basic questions to ask yourself;

1. Is the project adequately described? Does the EIS enable you to fully understand what the project is all about?
2. Is the surrounding environment adequately described? Are you able to understand how the project relates to its surroundings?
3. Are all the possible impacts adequately described? Is there any particular impact which is not discussed at all, or superficially discussed? Are there any assumptions which appear unreasonable? Is there adequate information in the EIS to support conclusions?
4. Are alternatives to the proposed project (including no project at all) adequately explored? Are there other ways to carry out the project which may be less damaging to the environment? Are different designs or approaches discussed sufficiently? What basic improvements can you suggest?
5. What new data or information can you provide that will shed light on possible environmental impacts or other alternatives which may lessen impacts?

There is a lot of truth in the adage that "local people know best." Residents often know local conditions from years of personal experience. This type of input can sometimes be more valuable than technical studies.

In submitting written comments:

- o Be as specific as possible. Ask direct questions you would like to see answered in the EIS.
- o Itemize your comments. Rather than lumping them together in long paragraphs, list each point separately.
- o Be reasonable. Offer facts to support opinions.

30-DAY CONSULTATION PERIOD

If you wish to be consulted regarding a proposed action, you must send a written request to the proposing agency or applicant as listed in the EIS Preparation Notice within 30 days of its publication in the OEQC Bulletin.

The proposing agency or applicant will send you a letter requesting your comments along with a copy of the EIS Preparation Notice and the Environmental Assessment.

You have 30 days from the date of publication in the OEQC Bulletin in which to submit written comments regarding the environmental effects of the proposed action. This allows you to contact the preparers of the EIS with major concerns that you would like to see fully discussed in the EIS.

Applicants and proposing agencies must respond in writing to all substantive comments and include both comments and responses in the Draft EIS.

45-DAY REVIEW PERIOD

Should you desire to review the Draft EIS and submit comments for consideration, you must write to the proposing agency or accepting authority indicated in the OEQC Bulletin within 45 days of publication of the Notice of Availability in the OEQC Bulletin. Your comments will be responded to in writing and incorporated into the Final EIS.

LITIGATION/TIME LIMITATIONS (CHAPTER 343-7, HRS.)

For the purpose of bringing judicial action under Chapter 343, an "aggrieved party" may be an applicant, an affected agency, the Environmental Council, or persons who provided written comments during the consultation or review periods of the EIS process.

If, as an "aggrieved party," you wish to challenge a determination made during the EIS process, you must do so by filing suit in circuit court within specific time limitations.

Should you wish to litigate, you should consider the resources of public interest law firms, environmental groups with legal resources and private lawyers acting pro bono publico (for the public good).

As an aggrieved party, you can initiate judicial proceedings to challenge any of the following determinations in the EIS process:

1. Lack of Assessment

If a proposed action applicable to the EIS law is undertaken or initiated without an Environmental Assessment or a formal determination on the requirement of an EIS, an aggrieved party has 120 days from the time the action was initiated to file suit in circuit court.

2. Negative Declaration

If an agency determines that an EIS is not required, an aggrieved party has 60 days from the date of publication of the Negative Declaration in the OEQC Bulletin to file suit in circuit court.

3. Acceptance of EIS

If an aggrieved party wishes to challenge the acceptance of an EIS, it has 60 days from the date of publication of the Notice of Acceptance in the OEQC Bulletin to file suit in circuit court.

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OTHER RELATED ENVIRONMENTAL REVIEW LAWS

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) (11-200-25)

A proposed project or action that includes the utilization of federal lands or funds may require adherence to federal EIS regulations (NEPA) as well as State EIS law.

When an action is subject to both the National Environmental Policy Act (NEPA) and the State EIS law, the following shall occur:

- o The proposing applicant or agency, upon discovering that its proposed action is subject to both laws, shall notify the responsible federal agency, OEQC, and any agency with an interest in the action.
- o OEQC and state and federal agencies shall cooperate to the fullest extent possible to reduce duplication of the requirements. This cooperation shall include, to the fullest extent possible, joint EIS's, concurrent public review, and concurrent processing. Where there are additional federal requirements, OEQC and state agencies shall cooperate in fulfilling them so that one document shall comply with all applicable laws.
- o Acceptance of the Final EIS shall first be by the Governor or the Mayor of the respective county, or an authorized representative; the EIS shall then be submitted to the U.S. Environmental Protection Agency.

HAWAII COASTAL ZONE MANAGEMENT ACT (CHAPTER 205A, HRS.)

In 1975, Chapter 205A, HRS was enacted as an interim measure which directed each county to establish a special management area inland from the shoreline, within which permits are required for certain types of development. These interim controls were made permanent by the Hawaii Coastal Zone Management Act of 1977, which was amended in 1979 (Act 200).

The county designated Special Management Areas (SMA's) extend for at least 100 yards inland from the shoreline with some exceptions for tidal water influenced areas such as

Heeia and Kawainui marshes.

These special management areas overlap the shoreline setback area which is covered by Chapter 343, HRS. However, the requirements of Chapter 343, HRS do not cover those areas inland of the shoreline setback unless that land falls under another category covered by Chapter 343, HRS. Such is the case in Waikiki.

Each county has an authority which administers the SMA permit process. For the City and County of Honolulu it is the Department of Land Utilization; for Kauai, Maui and Hawaii counties it is the Planning Commission (see Appendix A). Section 205A-26, HRS includes the following special management area guideline that authorities use for review of developments in the SMA's:

No development shall be approved unless the authority has first found: (A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. such adverse effects shall include but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;...

Each authority must assess proposed developments in the SMA to determine whether there will be significant environmental effects. For Maui and Hawaii counties, the applicant is required to provide the authority with information on the development's technical, economic, social and environmental characteristics. This is similar to the information required in environmental assessments under the State EIS Regulations. The counties of Kauai and Oahu have authorized through their SMA ordinances the option for the authority to require the preparation of an EIS. All four counties also permit the submittal of an accepted EIS as part of the information needed by the authority to assess the proposed development.

The counties of Kauai, Maui and Hawaii utilize significant criteria, which are similar to that contained in the EIS Regulations, to determine whether there will be a significant effect on the SMA (see Appendix B). The City and County of Honolulu has limited the criteria to the objectives and policies in Section 205A-2, HRS and the review guidelines of City and County Ordinance 4529, Section 4.

The City and County of Honolulu, Department of Land Utilization (DLU) through the provisions of Ordinance 4529 must assess and determine whether or not to require an EIS for developments within the Honolulu SMA. If the Director determines that an EIS is not required, then a Negative Declaration is prepared. If he determines that an EIS is required then DLU must prepare a Negative Declaration or require an EIS.

The controls described above were simulated in part by the Federal Coastal Zone Management Act of 1972. This statute authorizes financial assistance to the states to develop and implement such coastal zone management programs. It also requires that federal activities that affect the coastal zone be conducted to the maximum extent practicable in a manner consistent with Hawaii's coastal zone management program. This requirement also applies to activities that affect the coastal zone that are proposed by applicants seeking federal licenses or permits.

Prior to implementing such actions, federal agencies or applicants seeking federal permits or licenses must prepare a consistency determination which is furnished to the Department of Business and Economic Development (DBED), the coastal zone management lead agency for Hawaii. DBED must concur with the applicant's consistency determination before the applicant's action may proceed. In reaching their decision, DBED is required to consider the views of the public on applicants seeking federal permits and licenses. Therefore, by responding to public notices of such projects, the public can participate in these decisions. More information on these procedures may be obtained from DBED as listed in Section 12 of this guidebook. (See Chapter 344, Environmental Policy Act provided in Appendix C for other EIS triggers.)

April 12, 2015
This Guide is obsolete
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AGENCIES TO CONTACT FOR INFORMATION

NOTE: See **Hawaii Environmental Resources Directory**, published by O.E.Q.C., for more comprehensive list of environmental resource agencies, include the public and private sectors.

STATE AGENCIES

OFFICE OF STATE PLANNING

o COASTAL ZONE MANAGEMENT PROGRAM

P.O. Box 2359
 Honolulu, Hawaii 96813
 Phone: 548-8467

Coastal Zone Management (CZM) is about striking a balance between environmental and economic concerns. The CZM objectives and policies are binding on all State and county agencies. The CZM program, therefore, studies coastal issues, develops and improves coastal regulatory programs, and monitors state and county agencies' actions to assure consistency and compliance. The program also administers the Federal consistency review whenever Federal actions can impact the State's coastal zone. A permit information service is provided to help interested people better understand the regulatory systems applicable to land and water uses. For those involved in projects requiring numerous multi-government permits, a consolidated application process is also offered.

o LAND USE DIVISION

250 South King Street, Room 819
 Honolulu, Hawaii 96813
 Phone: 548-2066

The Land Use Division, which is administratively assigned to the Office of State Planning, is responsible for implementing the land use policies of the State of Hawaii.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

o LAND USE COMMISSION

**335 Merchant Street, Room 104
Honolulu, Hawaii 96813
Phone: 548-4611**

The Land Use Commission is a quasi-judicial body appointed by the Governor to carry out the provisions of the State land use law which places all lands in the State into four districts: Urban, Agricultural, Rural, and Conservation. The Commission's primary functions are to process petitions for district boundary changes over 15 acres, except for changes to the Conservation District, special permits within the Agricultural and Rural Districts for areas greater than 15 acres, and district boundary interpretations. In its district boundary amendment process, the Commission is required by law (Chapter 205, HRS) to consider whether the proposed boundary change conforms to the Hawaii State Plan, the Commission district standards and various areas of State concern.

DEPARTMENT OF HEALTH

o ENVIRONMENTAL PLANNING OFFICE

**Five Water Front Plaza, Suite 250
500 Ala Moana Boulevard
Honolulu, Hawaii 96813
Phone: 543-8337**

The Environmental Planning Office provides short- and long-term planning services for all programs under the Deputy Director of the Environment and maintains environmental plans, land use, environmental education, and public informational programs for the Department. The Department also develops and implements the general plan of the county and the various community development plans, and applies those guidelines in reviewing land development plans and permits which State and county laws require to be processed through our department and the planning commission.

o **ENVIRONMENTAL COUNCIL**

**465 South King Street, Room 104
Honolulu, Hawaii 96813
Phone: 548-6915**

The Council makes, amends, and repeals rules implementing Hawaii's Environmental Impact Statement (EIS) law (Chapter 343, HRS) and hears appeals on non-acceptances of EISs. The Council monitors the progress made by state, county, and federal agencies in carrying out the State's environmental policies, and serves as liaison between the general public and the director of the state Office of Environmental Quality Control.

o **OFFICE OF ENVIRONMENTAL QUALITY CONTROL**

**465 South King Street, Room 104
Honolulu, Hawaii 96813
Phone: 548-6915**

The Office of Environmental Quality Control (OEQC) is responsible for implementing the EIS law and serves in an advisory capacity on all matters relating to environmental quality control. It coordinates all State governmental agencies in matters concerning environmental quality and administers the rules of the EIS law. It receives, distributes, and reviews all documents pursuant to the EIS process and informs the public of proposed actions through its semi-monthly Bulletin.

DEPARTMENT OF LAND AND NATURAL RESOURCES

o **AQUATIC RESOURCES DIVISION**

**1151 Punchbowl Street, Room 330
Honolulu, Hawaii 96813
Phone: 548-5920**

The Division provides for pelagic, reef, and inshore aquatic resources protection and enhancement programs. Its functions include conducting underwater surveys to manage areas designated as sanctuaries or for fisheries management, informing the public about aquatic resources protection, management and enhancement programs, investigating fish kills in coordination with the Department of Health, and coordinating and disseminating information relative to aquatic resources concerns.

o FORESTRY & WILDLIFE DIVISION

**1151 Punchbowl Street
Honolulu, Hawaii 96813
Phone: 548-8850**

This division is responsible for wild-land recreational programs on forest reserves, public hunting areas, wildlife sanctuaries; commercial forestry on State lands; endangered species protection and management; and providing informational materials on natural resources.

o WATER & LAND DEVELOPMENT DIVISION

**1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96809
Phone: 548-7533**

The Division of Water and Land Development administers the State's programs in water resource management, mineral resources assessment, flood prevention and control, and water development.

o HISTORIC SITES PRESERVATION OFFICE

**1151 Punchbowl Street, Room 310
Honolulu, Hawaii 96813
Phone: 548-6408**

The State Historic Preservation Office is charged with the implementation of the National Historic Preservation Act of 1966, as amended, and Chapter 6E, Hawaii Revised Statutes. It reviews proposed development and land use projects for any effects they might have on historic properties.

o OFFICE OF CONSERVATION & ENVIRONMENTAL AFFAIRS

**1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Phone: 548-7837**

The Department of Land and Natural Resources is responsible for all conservation zoned lands in the State. The Office of Conservation & Environmental Affairs administers the Conservation District Use Application (CDUA) process, coordinates

environmental reviews, and assists in the development of natural resources management programs on behalf of the Department.

DEPARTMENT OF TRANSPORTATION

o STATEWIDE TRANSPORTATION PLANNING OFFICE

**600 Kapiolani Boulevard, Room 306
Honolulu, Hawaii 96813
Phone: 548-6526**

STPO reviews Environmental Impact Statements, zone change requests, permit applications, county plan amendments, and other approvals of proposed development projects for their impacts on the state transportation facilities (airports, highways, harbors). It conducts multi-modal, long-range planning of the State's transportation system, forecasting growth factors related to transportation.

UNIVERSITY OF HAWAII

o ENVIRONMENTAL CENTER

**2550 Campus Road, Crawford 317
Honolulu, Hawaii 96822
Phone: 948-7361**

The Environmental Center was established by the University of Hawaii in 1970 in response to the State Environmental Quality Act (Hawaii Revised Statutes, Chapter 341). The environmental education function of the Center includes advising the University's Liberal Studies Program on appropriate curricular for students seeking BA's in Liberal Studies with environmental emphases or an Environmental Studies Certificate, as well as counseling students in these programs. The Center also sponsors Environmental Forums and assists in placing students in environmental internships. The research functions of the Center include the organization and coordination of multi-disciplinary environmental research projects, and the conduct by the Center staff of environmental research projects in areas of their special competence. The service functions of the Center include the reviews of environmental impact statements, applications for various environmental permits, proposed environmental legislation and regulations, and various State and Federal plans with environmental implications to the State of Hawaii. In all of its review and research activities, the Center relies on the expertise of various members of the University system for guidance.

COUNTY AGENCIES

CITY AND COUNTY OF HONOLULU

o DEPARTMENT OF GENERAL PLANNING

**650 South King Street, 8th Floor
Honolulu, Hawaii 96813
Phone: 523-4713**

The Department of General Planning is responsible for preparing and revising the General Plan and Development Plans of the City and County of Honolulu. The General Plan sets forth the objectives and policies for long-range development of the City and County of Honolulu. The Development Plans are relatively detailed schemes for implementing the development objectives and policies of the General Plan. Development Plans include: Common Provisions, Special Provisions, and Land Use and Public Facilities Maps.

o DEPARTMENT OF LAND UTILIZATION (DLU)

**650 South King Street, 7th Floor
Honolulu, Hawaii 96813
Phone: 523-4254**

The Department of Land Utilization prepares and administers zoning ordinances and maps, subdivision ordinances and rules, and environmental protection ordinances to implement the objectives and policies of the General Plan and Development Plans. DLU processes a wide range of land use permits and applications including: zoning changes, conditional use permits, shoreline management permits, subdivision applications, variances, State special use permits, planned development and cluster applications, site plan review and special district applications. The Department conducts environmental assessments of project proposals and administers the Coastal Zone Management Program for the City and County of Honolulu. It advises the Planning Commission and the City Council as required.

COUNTY OF HAWAII

o PLANNING DEPARTMENT AND PLANNING COMMISSION

**25 Aupuni Street
Hilo, Hawaii 96720
Phone: 961-8288**

The Planning Department provides technical advice to the Mayor, Planning Commission and County Council on all planning and related matters. It serves the public by enforcing the State Land Use Law and by administering and enforcing the subdivision and zoning codes of the County.

COUNTY OF KAUAI

o PLANNING DEPARTMENT AND PLANNING COMMISSION

**4280 Rice Street
Lihue, Hawaii 96766
Phone: 245-3919**

The Kauai Planning Department is responsible for virtually all county land use-related permits. This includes the review and processing of General Plan and zoning land use changes as well as variances, use, and zoning permits. Shoreline setback variances, Special Management Area permits and subdivisions are also functions of the Planning Department.

COUNTY OF MAUI

o PLANNING DEPARTMENT AND PLANNING COMMISSION

**200 South High Street
Wailuku, Hawaii 96793
Phone: 244-7735**

The Maui Planning Department is responsible for virtually all county land use-related permits. This includes the review and processing of General Plan and zoning land use changes as well as variances, use, and zoning permits. Shoreline setback variances, Special Management Area permits and subdivisions are also functions of the Planning Department.

FEDERAL AGENCIES

U.S. DEPARTMENT OF AGRICULTURE

o SOIL CONSERVATION SERVICE

300 Ala Moana Boulevard, Room 4316
Honolulu, Hawaii 96850
Phone: 541-2600

The Soil Conservation Service (SCS) develops and carries out a national soil and water conservation program through more than 2,925 local conservation districts with more than 2.3 million cooperating landowners and operators. With the help of its cooperators, SCS inventories and assesses soil, water, and plant resources, and plans and applies conservation practices to reduce soil erosion as well as maintain the land's productivity.

U.S. DEPARTMENT OF DEFENSE

o U.S. ARMY WESTERN COMMAND (WESTCOM) OFFICE OF THE DEPUTY CHIEF OF STAFF FOR ENGINEERING

ATTN: APEN-IE
Fort Shafter, Hawaii 96858-5100
Phone: 438-1526

The ODCSENGR is responsible for managing all aspects of the WESTCOM environmental program. This includes providing technical and administrative support on matters related to the protection of endangered species and native Hawaiian plants, the protection of historic sites, the management of hazardous and toxic materials, the implementation of National Environmental Policy Act (NEPA) regulations, and the compliance with applicable pollution abatement regulations.

o U.S. ARMY ENGINEER DIVISION, PACIFIC OCEAN

ATTN: CEPOD-ED-PV, Building 230
Fort Shafter, Hawaii 96858-5440
Phone: 438-2263

This office is responsible for assessing the environmental impacts of Corps of Engineers' Civil Works projects and military construction projects. They also prepare coastal resources inventories for use by planning agencies concerned with Hawaii and the former Trust Territories.

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

**300 Ala Moana Boulevard, Room 3318
Honolulu, Hawaii 96850-4991
Phone: 541-1326**

HUD performs environmental assessments on HUD-assisted housing projects and subdivisions and reviews Environmental Impact Statements initiated under National Environmental Policy Act (NEPA) or Chapter 343, Hawaii Revised Statutes, when requested. HUD also monitors Community Development Block Grant grantees for their compliance with the National Environmental Policy Act, HUD standards, and other Federal authorities.

DEPARTMENT OF THE INTERIOR

o U.S. FISH AND WILDLIFE SERVICE OFFICE OF ENVIRONMENTAL SERVICES

**300 Ala Moana Boulevard, Room 6307
Honolulu, Hawaii 96813
Phone: 541-2749**

The Division is responsible for the administration of the Endangered Species Act and activities covered under the Land and Water Resources Development Planning Program. These include: listing of endangered species; preparation of endangered species recovery plans; informal/formal consultation under Section 7 of the Endangered Species Act; review of Federal, State, and local permits and license applications, environmental assessments and impact statements, general plans and land use amendments, clearinghouse reviews, geothermal, OTEC, and hydropower proposals, water quality certification, Federal agency consistency certification reviews under Coastal Zone Management, protection of wetland habitats under the Farm Bill, environmental contaminant review of all projects, specific contaminant investigations, and Natural Resource Damage Assessments; providing technical assistance to government agencies regarding fish and wildlife resource study methods and design (including Instream Flow Incremental Methodology).

**o U.S. GEOLOGICAL SURVEY
WATER RESOURCES DIVISION**

**300 Ala Moana Boulevard, Room. 6110
Honolulu, Hawaii 96850
Phone: 541-2653**

The mission of the Water Resources Division is to develop and disseminate scientific knowledge and understanding of the Nation's water resources. In support of this mission three broad categories of activities are carried out. These are: resource assessment, research, and coordinating the activities and cataloging the products of numerous other entities involved in water research, data acquisition, and information transfer. The Hawaii District collects, compiles, and stores water resources data (surface water, ground water, and water quality) and conducts hydrologic investigations within the State of Hawaii and in the areas of the western Pacific.

U.S. ENVIRONMENTAL PROTECTION AGENCY

**300 Ala Moana Boulevard, Room 1302
Honolulu, Hawaii 96850
Phone: 541-2710**

The Environmental Protection Agency's mission is to protect human health and the environment. The Agency implements federal laws designed to protect the environment and is responsible for the administration of nine comprehensive environmental protection laws: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Toxic Substances Control Act, the Marine Protection, Research, and Sanctuaries Act, the Uranium Mill Tailings Radiation Control Act, and the Asbestos Hazard Emergency Response Act. The EPA also registers pesticides and regulates their use; set tolerance levels for pesticides in food; sets environmental radiation protection standards; and sets standards for drinking water. EPA's priority programs include proper disposal of hazardous waste and toxic substances (e.g., asbestos and polychlorinated biphenyls); underground petroleum and chemical storage tanks; and the Title III program (Emergency Planning and Community Right-To-Know) which requires the State and local governments to develop contingency plans to respond to chemical spills and emergencies.

**U.S. DIRECTORATE OF FACILITIES ENGINEERING
ENVIRONMENTAL MANAGEMENT BRANCH, PLANNING DIVISION**

**U.S. Army Support Command, Hawaii
Fort Shafter, Hawaii 96858-5000
Phone: 655-0691**

The Environmental Management Branch serves as a resource office for the U.S. Army Support Command, Hawaii (USASCH) facilities. It deals with problems involving air, asbestos, polychlorinated biphenyls (PCB's), hazardous materials/wastes, drinking water, wastewater, solid waste, underground storage tanks, spills, and other environmentally related items. It provides guidance on historic preservation, endangered species protection, and environmental documentation.

**U.S. COAST GUARD
USCG SHORE MAINTENANCE DETACHMENT**

**300 Ala Moana Boulevard, 8th Floor
Honolulu, Hawaii 96850
Phone: 541-2077**

The Coast Guard is the primary federal agency responsible for marine environmental protection on navigable waters of the United States, the contiguous zone and the high seas. It renders its resources to the Marine Environmental Program whose overall objective is to maintain or improve the quality of the marine environment and to respond to environmental contaminants in the coastal area. In addition to the Coast Guard's well-known search-and-rescue mission, district vessels and aircraft also provide a wide range of services including the enforcement of the Fisheries Conservation and Management Act which establishes controlled fishing areas within 200 miles of the United States shores. In the Pacific Basin, Coast Guard vessels and aircraft not only patrol the waters around the Hawaiian Islands, but also Guam, Northern Mariana Islands, American Samoa, and other U.S. territories in the Pacific. Two high-endurance cutters also patrol the rich fishing grounds off the coast of Alaska. The Coast Guard is also the leading federal agency charged with the prevention of oil pollution of our waters. If an oil spill should occur, the Coast Guard coordinates cleanup efforts.

USEFUL RESOURCES

- o Hawaii Environmental Resources Directory, Office of Environmental Quality Control, 1990
- o A Register of Government Permits Required for Development, State of Hawaii, Department of Planning and Economic Development, December 1977
- o Permits and Environmental Requirements for Aquaculture in Hawaii, State of Hawaii, Department of Planning and Economic Development, June, 1977
- o State of Hawaii Data Book, (issued yearly) State of Hawaii, Department of Business and Economic Development.
- o Hawaii Environmental Laws and Regulations, Volume I & II. Office of Environmental Quality Control and Environmental Center, University of Hawaii, 1972 (with revisions). (Contact the Environmental Center for copies.)

April 17, 2015
This Guide is for historical purposes.
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April 12, 2013.
This Guide is obsolete.
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