

A P P E N D I C E S

APPENDIX A: ENVIRONMENTAL IMPACT STATEMENT ACT

Act 246 (1974), Hawaii Revised Statutes Chapter 343

**ENVIRONMENTAL QUALITY COMMISSION
AND ENVIRONMENTAL IMPACT STATEMENTS**

SECTION

- [343-1] DEFINITIONS
- [343-2] PUBLIC RECORDS AND NOTICE
- [343-3] ENVIRONMENTAL QUALITY COMMISSION
- [343-4] APPLICABILITY AND REQUIREMENTS
- [343-5] RULES AND REGULATIONS
- [343-6] LIMITATION OF ACTIONS
- [343-7] SEVERABILITY

[§343-1] Definitions. As used in this chapter unless the context otherwise requires:

- (1) "Acceptance" means a formal determination by an agency, the governor of the State, or the mayor of a county, that the document required to be filed pursuant to section 343-4 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.
- (2) "Action" means any program or project to be initiated by any agency or applicant.
- (3) "Agency" means any department, office or board or commission of the State or county government which is a part of the executive branch of that government.
- (4) "Applicant" means any person that, pursuant to statute, ordinance, rule, or regulation, officially requests approval for a proposed action.
- (5) "Commission" means the environmental quality commission.
- (6) "Environmental impact statement" or "statement" means an informational document prepared in compliance with applicable rules and regulations promulgated under section 343-5 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic and social welfare 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.
- (7) "Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than agencies.
- (8) "Significant effect" means the sum of those effects that affect the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic or social welfare. [L 1974, c 246, pt of §1]

[§343-2] Public records and notice. All statements and other documents prepared under the provisions of this chapter shall be made available for inspection by the public during established office hours.

The commission shall inform the public of notices filed by agencies of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or non-acceptance of statements. The commission shall inform the public by the publication of a periodic bulletin to be available

to persons requesting this information through its office and through public libraries. [L 1974, c 246, pt of §1]

[§343-3] **Environmental quality commission.** There is established in the office of the governor an environmental quality commission which shall administer this chapter. The commission may delegate to any person such power or authority vested in the commission as it deems reasonable and proper for the effective administration of this chapter, except the power to make, amend, or repeal rules and regulations. The commission shall be composed of ten members appointed by the governor as provided in section 26-34. The term of each member shall be four years, provided that of the members initially appointed four members shall serve for four years, four members shall serve for three years, and the remaining two members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. At least part of the membership shall include representatives of labor, management, the construction industry, environmental interest groups, real estate groups, and the architectural, engineering, and planning professions. The director of environmental quality control shall serve as ex officio voting member. The governor shall appoint the chairman. The members shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties. [L 1974, c 246, pt of §1]

[§343-4] **Applicability and requirements.** (a) Except as otherwise provided, an environmental impact statement shall be required for:

- (1) Any action which will probably have significant effects and which proposes the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.
- (2) Any action within the classes of action specified below:
 - (A) All actions proposing any use within any land classified as conservation district by the state land use commission under chapter 205 which will probably have significant environmental effects.
 - (B) All actions proposing any use within the shoreline area as defined in section 205-31, or within 300 feet seaward of it which will probably have significant environmental effects.
 - (C) All actions proposing any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6, which will probably have significant environmental effects.
 - (D) All actions proposing any use within the Waikiki-Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas (map designated as portion of 1967 city and county of Honolulu General Plan Development Plan Waikiki-Diamond Head [Section A], which will probably have significant environmental effects.
 - (E) All actions proposing any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservat-

ion, and which will probably have significant environmental effects, except all actions proposing any new county general plan or amendments to any existing county general plan initiated by a county.

(b) Whenever an agency proposes to implement an action proposing the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted or funded, which is not included in any of the lists referred to in section 343-5, that agency shall assess such action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that the statement shall be required only if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination for the public's information pursuant to section 343-2. The statement, if required, shall be made available for public review and comment through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section 343-2. The agency shall respond in writing to comments received during the review. Following this review by the public and any subsequent revision by the agency, the commission, when requested by the agency, may make a recommendation as to the acceptability of the statement. The final authority to accept such a statement shall rest with:

- (1) The governor, or his authorized representative, whenever an action proposes the use of state lands or the use of state funds; or
- (2) The mayor, or his authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required statement shall be a condition precedent to the use of state or county lands or of state or county funds in implementing the proposed action. Upon acceptance or non-acceptance of the statement, the governor or mayor, or his authorized representative, shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or non-acceptance of the statement pursuant to section 343-2.

(c) Whenever an applicant proposes to implement an action specified by section 343-4(a) (2) and which requires approval of an agency, the agency receiving the request for approval shall assess such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that the statement shall be required only if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the commission which shall, in turn, publish the agency determination for the public's information pursuant to section 343-2. The statement, if required, shall be prepared by the applicant who shall file the statement with the agency. The statement shall be made available for public review and comments through the commission. The commission shall inform the public of the availability of the statement for public review and comments pursuant to section 343-2. The applicant shall respond in writing to comments received during the review. Following the review by the public and any subsequent revision by the applicant, the commission, when requested by the applicant or agency, may make a recommendation as to the acceptability of the statement. The authority to accept such statement shall rest with the agency initially receiving the request for approval. Acceptance of a required statement shall be a

condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or non-acceptance of the statement, the agency shall file notice of such determination with the commission. The commission shall, in turn, publish the determination of acceptance or non-acceptance of the statement pursuant to section 343-2. The agency receiving the request shall, within sixty days of receipt of the statement, notify the applicant and the commission of the acceptance or non-acceptance of the statement. The statement shall be deemed to be accepted if the agency fails to accept or not accept the statement within sixty days after receipt of the statement.

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

(d) Whenever an applicant simultaneously requests approval from two or more agencies and there is a question as to which agency has responsibility of complying with subsection (c) with respect to a particular action, the commission, after consultation with the agencies involved, shall determine which agency is responsible.

(e) Whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, where applicable and appropriate, incorporate by reference in whole or in part previous determinations of whether a statement is required and previously accepted statements. The commission shall, by rules and regulations, establish criteria and procedures for the use of previous determinations and statements.

(f) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the draft statement for such action shall be submitted to the environmental quality commission for distribution, review, and evaluation at least 30 days prior to submission of the draft statement to the President's Council on Environmental Quality. The final statement for such action shall be first approved, by the governor or his authorized representative, whenever an action proposes the use of state lands or the use of state funds, or by the mayor, or his authorized representative, of the respective county whenever an action proposes only the use of county lands or the use of county funds, prior to the submission of the statement to the President's Council on Environmental Quality.

(g) A statement that is approved with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required. [L 1974, c 246, pt of §1]

[§343-5] Rules and regulations. After consultation with the affected agencies, the commission shall make, amend, and repeal rules and regulations to implement the provisions of this chapter. The adoption, amendment, and repeal of all rules and regulations shall be subject to chapter 91. At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of such rules and regulations. The rules and regulations shall:

- (1) Prescribe the contents of an environmental impact statement;
- (2) Prescribe procedures whereby a group of proposed actions may be treated by a single statement;
- (3) Prescribe procedures for the submission, distribution, review, and approval or disapproval of a statement;
- (4) Prescribe procedures for the applicant to appeal a determination to the environmental quality commission;
- (5) Establish criteria to determine whether a statement is acceptable or not;
- (6) Establish a list of classes of action within the actions specified in section 343-4(a) (1) and section 343-4(a) (2) which, because such action will probably have minimal or no significant effect on the environment, shall be exempt from the preparation of a statement;
- (7) Establish a list of classes of action, within the actions specified in section 343-4(a) (1) and section 343-4 (2), which provide essential public utility services and which, because such action will probably have minimal or no significant effect on the environment, shall be exempt from the preparation of a statement;
- (8) Prescribe procedures for informing the public of determinations that a statement is either required or not required under section 343-4(b) and (c), and for informing the public of the availability of statements for review and comments, and for informing the public of the acceptance or non-acceptance of the statement. [L 1974, c 246, pt of §1]

[§343-6] Limitation of actions. (a) Any judicial proceeding, the subject of which is the lack of determination that a statement is or is not required for a proposed action not otherwise exempted, shall be initiated within 180 days of the agency's decision to carry out or approve the action, or if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within 180 days after the proposed action is started.

(b) Any judicial proceeding, the subject of which is the determination that a statement is or is not required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-2.

(c) Any judicial proceeding, the subject of which is the acceptability of a statement, shall be initiated within sixty days after the public has been informed pursuant to section 343-2 of the acceptance of such statement; provided that only affected agencies, or persons who will be aggrieved by a proposed action and who provided written comments to such statement during the designated review period shall have standing to file suit; further provided that contestable issues shall be limited to issues identified and discussed by the plaintiff in the written comments. [L 1974, c 246, pt of §1]

[§343-7] Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable. [L 1974, c 246, pt of §1]

Saving clause, see L 1974, c 246, §3

APPENDIX B: ENVIRONMENTAL QUALITY COMMISSION REGULATIONS

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NOTE: Rules governing procedure before the Environmental Quality Commission are contained in a separate pamphlet entitled "Rules of Practice and Procedure," available at the office of the Commission.

STATE OF HAWAII
Environmental Quality Commission

ENVIRONMENTAL IMPACT STATEMENT REGULATIONS

Sub-Part A. General Provisions.

- 1:0 TITLE. These regulations shall be known as the Environmental Impact Statement Regulations.
- 1:1 AUTHORITY. The regulations contained herein are prescribed by the Environmental Quality Commission of the State of Hawaii, pursuant to Chapter 343, Hawaii Revised Statutes. These Regulations shall be followed by Hawaii State and County agencies (executive branch) and persons, in the implementation of the provisions of Chapter 343, Hawaii Revised Statutes.
- 1:2 PURPOSE. The purpose of these Regulations is to provide agencies and persons with procedures, specifications of contents of Environmental Impact Statements, criteria and definitions of Statewide application to be used in the implementation of Chapter 343, Hawaii Revised Statutes. Chapter 343, Hawaii Revised Statutes intends the establishment of a system of environmental review at the State and County levels which will insure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations.
- 1:3 PERIODIC BULLETIN. The Environmental Quality Commission will publish a periodic bulletin to inform the public of: a) notices filed by agencies of determinations that Environmental Impact Statements are required or not required; b) the availability of Statements for review and comments; c) the acceptance or non-acceptance of Statements; and d) other notices required by these Rules and Regulations. The bulletin will be made available to persons requesting the same either by telephone, correspondence or in person. Copies of the bulletin shall also be sent to the State Library System and other depositories or clearinghouses for State material.
- 1:4 DEFINITIONS. Whenever the following words are used in these Regulations, unless otherwise defined, they shall have the meaning ascribed to them in this section. These definitions are intended to clarify but not to replace or negate the definitions used in Chapter 343, Hawaii Revised Statutes.
- a. Acceptance means a formal determination by an agency, the Governor of the State, or the Mayor of a County, that the document required to be filed pursuant to Chapter 343, Hawaii Revised Statutes fulfills the definition and requirements of an Environmental

Impact Statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with Chapter 343, Hawaii Revised Statutes and these Regulations.

- b. Action means any program or project to be initiated by any agency or applicant.
- c. Agency means any department, office, board or commission of the State or County government which is a part of the executive branch of that government.
- d. Agency Action is an action proposed by an agency which will use State or County lands or funds.
- e. Applicant means any person that, pursuant to statute, ordinance, rule, or regulation, officially request approval from an agency for a proposed action.
- f. Applicant Action is an action proposed by a person within one of the five classes of action specified in Section 4(a)(2) of Chapter 343, Hawaii Revised Statutes.
- g. Approval for the purposes of these Regulations means a discretionary consent, sanction, or recommendation required of an agency prior to actual implementation of an action, as distinguished from a ministerial situation.
- h. Assessment is an evaluation by an agency of a proposed action to determine whether an Environmental Impact Statement is required.
- i. Commission means the Environmental Quality Commission.
- j. Emergency means a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.
- k. Environment means man's surroundings, inclusive of all of the physical, economic and social conditions which exist within the area which will be affected by a proposed action including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.
- l. Environmental Impact means an effect of any kind, whether immediate or delayed, on any component or the whole of the environment.
- m. Environmental Impact Statement or Statement or EIS means an informational document prepared in compli-

ance with Chapter 343, Hawaii Revised Statutes, applicable rules, and these Regulations, and which discloses: the environmental effects of a proposed action, the effects of a proposed action on the economic and social welfare of the community and State, the effects of the economic activities arising out of the proposed action, the measures proposed to minimize adverse effects, and the alternatives to the action and their environmental effects.

- n. Environmental Impact Statement Preparation Notice or EIS Preparation Notice means a document informing the Commission of an agency determination, after an assessment, that the preparation of an Environmental Impact Statement is required.
- o. Exempt Classes of Action are exceptions from the requirements of Chapter 343, Hawaii Revised Statutes for a class of actions, based on a determination that the class of actions will probably have a minimal or no significant effect on the environment.
- p. Negative Declaration means a determination by an agency that a given action does not have a significant effect on the environment and therefore does not require the preparation of an EIS.
- q. Person includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than agencies.
- r. Regulations means the Environmental Impact Statement Regulations.
- s. Significant Effect means the sum of those effects that affect the quality of the environment, including irrevocable commitment of a natural resource, curtailment of the range of beneficial uses of the environment, conflicts with the State's environmental policies or long-term environmental goals and guidelines as established by Chapter 342 and 344, Hawaii Revised Statutes or any revisions thereof, or amendments thereto, or adverse effects upon the economic or social welfare.

Sub-Part B. Applicability of Provisions--Agency Actions.

- 1:10 GENERAL. In determining which agency-proposed actions are subject to Chapter 343, Hawaii Revised Statutes, agencies are to assess at the earliest practicable time the significance of environmental impacts in its action, with a view to: the overall, cumulative impact; related actions in the region; and further actions contemplated.
- 1:11 EFFECTIVE DATE. Only those actions which have not been implemented or for which funds have not been allotted by the Chief Executive Officer prior to the effective date

of these Rules and Regulations, are subject to these Rules and Regulations.

1:12 AGENCY ACTION; RELATED ACTIONS.

- a. The applicability of Chapter 343, Hawaii Revised Statutes, to specific agency-proposed actions is conditioned by the agency's proposed use of State or County lands or funds. Therefore when an agency proposes to implement an action to use State or County lands or funds, it shall be subject to the provisions of Chapter 343, Hawaii Revised Statutes and these Regulations.
- b. Use of State or County funds shall include any form of funding assistance flowing from the State or a County, and use of State or County lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to said lands.
- c. A group of proposed actions shall be treated as a single action when: (1) the component actions are phases or increments of a larger total undertaking; (2) an individual project is a necessary precedent for a larger project; (3) an individual project represents a commitment to a larger project; or (4) the actions in question are essentially the same and a single Statement will adequately address the impacts of any single action.

- 1:13 FEASIBILITY OR PLANNING STUDIES. For agency actions, Chapter 343, Hawaii Revised Statutes, exempts from applicability any feasibility or planning study for possible future programs or projects which the agency has not approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose such considerations in any subsequent Statement.

Sub-Part C. Applicability of Provisions--Applicant Actions.

- 1:20 GENERAL. Chapter 343, Hawaii Revised Statutes applies to persons who are proposing to (1) implement actions which are either located in certain specified areas, or (2) are proposing certain types of amendments to existing County general plans and which require approval of an agency prior to proceeding with its action.

Agencies shall review their individual jurisdictional limits and approval authorities provided for by statute, ordinance, rule, or regulation, and identify those official approvals which are necessary prior to commencement of an action by a person as defined in Chapter 343, Hawaii Revised Statutes. Each agency should assure that potential applicants are fully aware of the applicability of Chapter 343, Hawaii Revised Statutes to specific

approval requests under the agency's legal jurisdiction; this may be accomplished by publication of an informational brochure or incorporation of EIS procedures into their existing regulations or operating procedures.

1:21 EFFECTIVE DATE AND RETROACTIVITY.

The effective date of Chapter 343, Hawaii Revised Statutes is June 15, 1974. Chapter 343, Hawaii Revised Statutes specifically does not apply to actions which have received all approvals from agencies having approval authority under any of the five classes of action (see Section 1:22) prior to June 15, 1974.

For actions (1) which were pending approval on June 15, 1974, or (2) for which an applicant requests approval on or after June 15, 1974, but prior to the effective date of Rules and Regulations pursuant to Chapter 343, Hawaii Revised Statutes, the agency having approval authority may, at its discretion, require an EIS from the applicant, provided, that any Statement which is accepted on or before the effective date of the Rules and Regulations, shall be deemed to be in compliance with Chapter 343, Hawaii Revised Statutes and no further Statement shall be required.

For any action for which the applicant has not obtained all necessary approvals and for which an EIS was not previously required, the applicant may be subject to Chapter 343, Hawaii Revised Statutes, provided, however, that any subsequent EIS that is required is limited to that component of the action for which an approval is necessary.

1:22 CLASSES OF ACTION.

- a. Chapter 343, Hawaii Revised Statutes establishes five (5) classes of action which subject an applicant to an EIS requirement, provided, also, that approval of an agency is required and that the agency finds that the proposed action may have significant environmental effects.

Chapter 343, Hawaii Revised Statutes refers to four (4) geographical designations and one (1) administrative category. The four (4) geographical designations generally are: lands in a conservation district as specified by the State Land Use Commission; lands within the shoreline area as defined in §205-31 of the Hawaii Revised Statutes or within 300 feet seaward of the shoreline area; lands within any historic site as designated in the National or Hawaii Register or Chapter 6 of the Hawaii Revised Statutes; and lands within the Waikiki - Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas, as shown on the map designated as portion of 1967 City and County

of Honolulu General Plan Development Plan Waikiki - Diamond Head (Section A). The fifth category relates to actions for which a County general plan amendment is proposed or required under County ordinance and which would result in a designation other than agricultural, conservation, or preservation (actions initiated by a County which proposes a new County General Plan or amendments to the General Plan, are excepted).

- b. A group of proposed actions shall be treated as a single action when: (1) the component actions are phases or increments of a larger total undertaking; (2) an individual project is a necessary precedent for a larger project; (3) an individual project represents a commitment to a larger project; or (4) 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.

1:23 REQUEST FOR APPROVAL AND DETERMINATION; RESPONSIBILITY OF APPLICANT.

- a. When an action is being proposed within one of the geographical or administrative designations listed in Section 1:22 of these Regulations, Chapter 343, Hawaii Revised Statutes would be applicable only if the applicant must officially request and receive approval for the proposed action from an agency, prior to commencement of the action. If there is such an action, then the approving agency must make a determination as to whether the proposed action may have a significant effect on the environment and thus will require an EIS.
- b. If the approving agency renders the determination that an EIS will be required for the applicant action said applicant shall be responsible for complying with the provisions of Chapter 343, Hawaii Revised Statutes and preparing an acceptable EIS and any and all other documents required by Chapter 343, Hawaii Revised Statutes.

- 1:24 IDENTIFICATION OF APPROVING AGENCY. The authority for requiring Statements and for accepting any required Statements that have been prepared shall rest with the agency initially receiving the request for an approval, after the effective date of these Rules and Regulations. In the event that an applicant simultaneously requests approval from two or more agencies and these agencies are unable to agree as to which agency has the responsibility for complying with Section 4(c) of Chapter 343, Hawaii Revised Statutes, the Environmental Quality Commission after consultation with the agencies involved, shall determine which agency is responsible.

In making such determination, the Commission should take into consideration the following factors among others:

- a. the agency with the greatest responsibility for supervising or approving the action as a whole;
- b. the agency that can most adequately fulfill the requirements of Chapter 343, Hawaii Revised Statutes and these Regulations;
- c. the agency that has special expertise or access to information;
- d. the extent of participation of each agency in the action.

Sub-Part D. Assessment of Proposed Actions.

1:30 EARLY ASSESSMENT; AGENCY ACTIONS; APPLICANT ACTIONS.

- a. For agency actions, agencies are to assess proposed actions at the earliest practicable time in order to assure thoughtful and deliberate evaluation in determining the significance of various environmental impacts.

Subsequent to the conception of an agency-proposed action, but prior to the adoption of a plan of study, the agency should: (1) identify potential impacts; (2) evaluate the potential significance of each impact; (3) provide for detailed study of major impacts; and (4) determine the need for a statement. In the assessment process, the agency should consult with other agencies having jurisdiction or expertise as well as citizen groups and individuals.

- b. For applicant actions, the approving agency shall assess and determine the need for an EIS within thirty (30) days from the submission of the request for approval. An informal assessment can occur prior to the official submission of the approval request; Chapter 343, Hawaii Revised Statutes does not prohibit assessment prior to the submission of an official request for approval. In the assessment process, the agency should (1) identify potential impacts; (2) evaluate the potential significance of each impact; (3) indicate areas which require further study; (4) determine the need for a Statement; and (5) if a Statement is required, prescribe the Statement information necessary to assure adequate discussion and disclosure of environmental impacts. The applicant shall provide whatever information the approving agency deems necessary to facilitate the assessment process and shall include, but not be limited to, the following:

1. identification of applicant;
 2. description of proposed action and statement of objectives;
 3. description of affected environment, including a detailed map (preferably U.S.G.S. topographic map) and related regional map; and
 4. general description of the action's technical, economic, social and environmental characteristics.
- c. In either case, the agency shall document its assessment of a proposed action for future reference. The actual determination shall be published, but if the agency desires, it may also publish the contents of its environmental assessment and solicit comments from other agencies and the general public.

- 1:31 SIGNIFICANCE CRITERIA AND PROCEDURES. In considering the significance of potential environmental effects, agencies shall consider the sum of those effects that affect the quality of the environment, and shall evaluate the overall and cumulative effects of the action.

A "significant effect" may vary with individual setting and circumstances of particular actions. Generally, however, any action which may have a major effect on the quality of the environment, or affect the economic or social welfare of an area, or would possibly be contrary to the State's environmental policies or long-term environmental goals and guidelines as expressed in Chapters 342 and 344, Hawaii Revised Statutes, and any revisions thereof and amendments thereto, would likely result in a "significant effect."

- a. In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, and expected consequence, either primary or secondary, or the cumulative as well as the short or long-term effect of the action. All agencies should bear in mind that in most instances, the following factors of an action, although not limited to same, may constitute a significant effect on the environment when the action:
 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 Chapters 342 and 344, Hawaii Revised Statutes, 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 economic or sociological activities;
 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 of animal or plant, or habitat;
 10. detrimentally affects air or water quality or ambient noise levels; or
 11. affects an environmentally sensitive area such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters.
- b. Agencies shall assess each proposed action and determine whether the anticipated effects constitute a "significant effect" in the context of Chapter 343, Hawaii Revised Statutes and these Regulations.
- c. After assessment, the agency shall file a notice of determination with the Commission.
1. If the agency determines that an action requires the preparation of a Statement, the notice will be considered to be an Environmental Impact Statement Preparation Notice and will be filed as early as possible after determination.
 2. If the agency determines that an EIS is not required, the notice will be considered to be a Negative Declaration and will be filed as early as possible after determination.

The notice shall indicate in a concise manner:

- a. identification of applicant or proposing agency;
- b. identification of approving agency, if applicable;

- c. identification of agencies consulted in making assessment;
- d. general description of the action's technical, economic, social and environmental characteristics;
- e. summary description of the affected environment, including suitable and adequate location and site maps;
- f. discussion of the assessment process as delineated in 1:30 of these Regulations;
- g. identification and summary of major impacts and alternatives considered, if any;
- h. proposed mitigation measures, if any;
- i. determination;
- j. findings and reasons supporting determination;
- k. agencies to be consulted in the preparation of the EIS, if applicable.

d. In addition to being filed with the Commission, all notices of determination for any applicant action shall be mailed to the requesting applicant by the approving agency. The Commission shall publish all notices of determination in the periodic bulletin first following the date of receipt by the Commission; provided, that the notice is received by the Commission at least five (5) working days prior to the date of publication of the bulletin; otherwise the notice will be published in the next bulletin. Within thirty (30) days from the date of publication, concerned individuals and citizen groups may request to be consulted parties as provided in paragraph 1:41 below.

1:32 CONSIDERATION OF PREVIOUS DETERMINATIONS AND ACCEPTED EIS's. Chapter 343, Hawaii Revised Statutes provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference in whole or in part previous determinations of whether a Statement is required, and previously accepted EIS's.

- a. Previous determinations and previously accepted EIS's may be incorporated by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.
- b. Agencies shall not, without considerable pre-examination and comparison, use past determinations and

previous EIS's to apply to the action at hand. The action for which a determination is sought should be thoroughly reviewed prior to the use of previous determinations and previously accepted EIS's. Further, when previous determinations and previous EIS's are considered or incorporated by reference, they must be substantially similar to and relevant to the action then being considered.

1:33 EXEMPT CLASSES OF ACTION.

- a. Chapter 343, Hawaii Revised Statutes, has directed that a list of classes of actions be drawn up which, because they will probably have minimal or no significant effect on the environment, shall generally be exempted from the preparation of an EIS and Negative Declaration. Actions exempt from the preparation of an EIS under this section are not exempt from complying with any other applicable statute, rule or regulation. The following list represents exempt classes of action:
1. operations, repairs or maintenance of existing structures, 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 same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to: (a) single family residences not in conjunction with the building of two (2) or more such units; (b) multi-unit structures designed for not more than four (4) dwelling units if not in conjunction with the building of two (2) or more such structures; (c) stores, offices and restaurants designed for total occupant load of twenty (20) persons or less, if not in conjunction with the building of two (2) or more such structures; (d) water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; and (e) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences;
 4. minor alterations in the conditions of land; water, or vegetation;

5. basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;
 6. continuing administrative activities, such as purchases for supplies and personnel-related actions;
 7. construction or placement of minor structures accessory to existing facilities;
 8. interior alterations involving such things as partitions, plumbing, and electrical conveyances;
 9. demolition of structures, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6, Hawaii Revised Statutes;
 10. zoning variances except: use, density, height, parking requirements and shoreline set-back variances.
- b. All such exemptions under these classes are inapplicable when the cumulative impact of planned successive actions of the same type, 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.
- c. Any agency may, at any time, request that a new exemption class be added, or an existing one amended or deleted. Such request must be submitted to the Commission, in writing, and contain detailed information to support the request.
- d. Each agency shall, through time and experience, develop its own list of specific types of actions which fall within the exempt classes, as long as such lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, Hawaii Revised Statutes. These lists and any amendments to said lists shall be submitted to the Commission for review and concurrence.
- e. Each agency shall maintain records of actions which it has found to be exempt from Chapter 343, Hawaii Revised Statutes.
- f. In the event the Governor declares a State of Emergency, he may exempt any affected program or action from complying with these Rules and Regulations, provided, however, that a State of Emergency need not be declared to exempt emergency repairs for

public service facilities from complying with Chapter 343, Hawaii Revised Statutes.

Sub-Part E. Preparation of Environmental Impact Statement.

1:40 GENERAL. Chapter 343, Hawaii Revised Statutes has directed that in both agency and applicant actions where Statements are required, the preparing party shall prepare the EIS, submit it to review and comment, and revise it taking into account all critiques and responses. Consequently, the EIS requires more than the preparation of a document, but involves the entire process of research, discussion, preparation of a Statement and review. The EIS process shall at a minimum involve: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for minimizing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and should not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall assure the preparation of EIS's at the earliest opportunity in the planning and decision-making process. This will assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequence of the proposed action.

1:41 CONSULTATION PRIOR TO FILING EIS. In the preparation of an EIS, proposing agencies and applicants shall assure that all appropriate agencies, noted in 1:31 (c) (k) and other citizen groups and concerned individuals as noted in 1:31(d) are consulted. To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS prior to the time the EIS is filed with the Commission, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns; provided, however, that the approving agency or accepting authority, at the request of the applicant or proposing agency, may waive the entire consultation process, if the action involves minor environmental concerns.

- a. In implementing the consultation process, the proposing agency or applicant shall make a written request to the agencies, groups or individuals to be consulted for comments and shall accompany said request with a copy of the Environmental Impact Statement Preparation Notice. Additionally the proposing agency or applicant may provide any other information it deems necessary.
- b. Upon receipt of the proposing agency's or applicant's written request for comments, the consulted agencies, groups or individuals shall have a period of thirty (30) days in which to make written comments regarding

the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority, may extend the period for comments for a period not to exceed thirty (30) days.

- c. Any written comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing by the proposing agency or applicant prior to the filing of the EIS with the approving agency.

1:42 CONTENT REQUIREMENTS. The Environmental Impact Statement shall contain a public explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, this Statement must include responsible opposing views, if any, on significant environmental issues raised by the proposal.

The EIS shall, at a minimum, contain the following information:

- a. Summary sheet which outlines and concisely discusses the contents;
- b. Project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:
 1. a detailed map (preferably U.S.G.S. topographic map) and related regional map;
 2. statement of objectives;
 3. general description of the action's technical, economic, social, and environmental characteristics;
 4. use of public funds or lands for the action;
 5. phasing and timing of action;
 6. summary technical data; diagrams; and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public;
 7. historic perspective.

c. Description of environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or man-made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall be included for purposes of examining the possible overall cumulative impact of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify or evaluate any and all environmental consequences be expressly noted.

d. The relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the Statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation.

e. The probable impact of the proposed action on the environment. Consideration of all phases of the action and consideration of all consequences on the environment; secondary or indirect, as well as primary or direct shall be included. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. Such secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including land use, water, and public services, of the area in question. Also,

if the proposed action constitutes a direct or indirect source of pollution as prescribed by any governmental agency, necessary data shall be incorporated in the EIS.

- f. Any probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health or other consequences adverse to environmental goals and guidelines established by Chapters 342 and 344, Hawaii Revised Statutes or any revision thereof and amendments thereto shall be included. This should be a brief summary of any adverse impacts including those effects discussed in paragraph (e) which are adverse and unavoidable under the proposed action. Also, rationale for proceeding with a proposed action, notwithstanding unavoidable effects, must be clearly set forth in this section.
- g. Alternatives to the proposed action. Any known alternatives for the action which could feasibly attain the objectives of the action - even though more costly - shall be described and explained as to why they were rejected.

For agency actions, this discussion must include where relevant, those alternatives not within the existing authority of the agency.

A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid or reduce some or all of the adverse environmental benefits, costs, and risks shall be included in the agency review process in order not to prematurely foreclose options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of no action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed action which would present different environmental impacts; alternative measures to provide for compensation of fish and wildlife losses, including the acquisition of land, waters, and interests therein. In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative.

Upon acceptance or non-acceptance of the EIS, a notice with a copy of the final EIS attached, will be filed with the Environmental Quality Commission by the appropriate Office - either the Governor or Mayor - or their authorized representative. The determination of acceptance or non-acceptance will be published in the periodic bulletin by the Commission.

Acceptance of a required Statement shall be a condition precedent to the use of State or County lands or State or County funds in implementing the proposed action.

- b. For actions proposed by applicants requiring approval from an agency, the applicant shall prepare the EIS in accordance with Chapter 343, Hawaii Revised Statutes, and these Regulations. Following the official receipt of the EIS, the applicant or approving agency may request the Commission to make a recommendation regarding the acceptability or non-acceptability of the Statement. If the Commission decides to make a recommendation, it may do so and submit same within ten (10) days after the end of the response period, provided, however, that in no event shall the period of time exceed sixty (60) days from the official receipt of the EIS. The Commission shall inform the public of its recommendation in the periodic bulletin.

Upon acceptance or non-acceptance by the approving agency, the agency shall file notice with a copy of the final EIS attached of its determination with the Commission, along with specific findings and reasons. The agency shall also notify the applicant of its determination. The Commission shall publish the determination of acceptance or non-acceptance in the periodic bulletin.

Acceptance of the required EIS will be a condition precedent to approval of the request and commencement of the proposed action.

- c. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's Statement. Chapter 343, Hawaii Revised Statutes directs the agency to notify the applicant and the Commission of the acceptance or non-acceptance of the EIS within sixty (60) days of the official receipt of the Statement. The approving agency shall so respond, and in the event that the agency fails to accept or not accept the Statement within sixty (60) days of its official receipt, then the Statement shall be deemed accepted.

Sub-Part I. Appeals to the Commission and Judicial Proceedings Limits.

1:80 APPEALS TO THE COMMISSION. Pursuant to Chapter 343, Hawaii Revised Statutes and §1:72 of these Regulations, an approving agency which is considering the acceptance or non-acceptance of a Statement submitted by an applicant shall render its determination within sixty (60) days from official receipt of the Statement and explain such determination via specific findings and reasons. An applicant may, within sixty (60) days after non-acceptance of a Statement by an agency, appeal the non-acceptance to the Environmental Quality Commission, which shall, within thirty (30) days of receipt of the appeal, notify the applicant of its determination. In any affirmation or reversal of an appealed non-acceptance, the Commission shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the Commission's decision.

1:81 JUDICIAL PROCEEDING - LIMITS.

- a. For any judicial proceeding the subject of which is the lack of determination that a Statement is or is not required for a proposed action not otherwise exempted, the proceeding shall be initiated within one hundred eighty (180) days of the agency's decision to carry out or approve the action or if a proposed action is undertaken without a formal determination by the agency that a Statement is or is not required, a judicial proceeding shall be instituted within one hundred eighty (180) days after the proposed action is started.
- b. For any judicial proceeding, the subject of which is the determination that a Statement is or is not required for a proposed action, the proceeding shall be initiated within sixty (60) days after the public has been informed of such determination pursuant to Section 1:31 of these Regulations.
- c. Any judicial proceeding, the subject of which is the acceptability of a Statement, shall be initiated within sixty (60) days after the public has been informed, pursuant to Section 1:72 of these Regulations, of the acceptance of such Statement; however, only affected agencies, or persons who will be aggrieved by a proposed action, and who in addition have provided written comments to such Statement during the designated review period shall have standing to file suit. Contestable issues shall be limited to issues identified and discussed by the Petitioner in the written comments previously submitted.

Sub-Part J. NEPA Actions.

1:90 APPLICABILITY TO CHAPTER 343, HAWAII REVISED STATUTES. When the situation occurs where a certain action will be subject both to the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of Chapter 343, Hawaii Revised Statutes, the following shall occur:

- a. The applicant or agency, upon discovery of its proposed action being subject to both Chapter 343, Hawaii Revised Statutes and NEPA shall notify the responsible Federal office and Environmental Quality Commission and any agency with a definite interest in the action (as prescribed by Chapter 343, Hawaii Revised Statutes) of the situation.
- b. NEPA requires that draft Statements be prepared by the responsible Federal official. When the responsibility of preparing an EIS is delegated to a State or County agency, the requirements of these Regulations shall apply in addition to Federal requirements under NEPA. The draft Statement for such an action subject to both requirements shall be submitted to the Environmental Quality Commission for distribution, review, and evaluation at least thirty (30) days prior to submission of the same to the President's Council on Environmental Quality.
- c. In all such actions where the use of State land or funds is proposed, the final Statement shall be submitted to the Governor or his appointed representative. In all such actions when the use of County land or funds is proposed, the final Statement shall be submitted to the Mayor, or his authorized representative. The final Statement in these instances must first be approved by the Governor or the Mayor (or their representatives), whichever is concerned prior to the submission of the same to the President's Council on Environmental Quality.
- d. Any approval obtained pursuant to the requirements above shall satisfy the provisions of Chapter 343, Hawaii Revised Statutes and no other Statement for the particular proposed action shall be required.

Sub-Part K. Supplemental Statements.

2:00 GENERAL. A Statement that is approved with respect to a particular action shall satisfy the requirements of Chapter 343, Hawaii Revised Statutes and no other Statement for that proposed action shall be required. A particular action is usually qualified by its size, scope, location, and timing, among other things. If there is

any major change in any of these characteristics, the original Statement would no longer be completely valid because an essentially different action would be under consideration. As long as there is no substantial change in a proposed action, the Statement associated with that action would be deemed to comply with these Regulations; if there is any major change, a Supplemental Statement must be prepared and reviewed as provided by these Regulations.

2:10 SUPPLEMENTAL STATEMENT. Proposing agencies and/or applicants shall prepare for public review Supplemental Statements whenever the proposed action for which a Statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A Supplement would be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned 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.

- a. The contents of the Supplemental Statement shall be the same as required by these Regulations for the EIS (and may incorporate by reference unchanged material from the same); however, in addition it shall fully document the proposed changes from the original EIS and completely and thoroughly discuss the EIS process followed for these changes, the positive and negative aspects of these changes and shall comply with the content requirements of Section 1:43 of these Regulations as they relate to the changes.
- b. The requirements of consultation, filing public notice, distribution, public review, and comment and response, shall be the same for the Supplemental Statement as is prescribed by these Regulations for an EIS.

2:11 The accepting authority shall be responsible for determining whether a Supplemental Statement is required.

Sub-Part L. Severability.

2:20 GENERAL. If any provision of these Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these Regulations which can be given effect without the invalid provision or application; and to this end, the provisions of these Regulations are declared to be severable.

I, ALBERT Q. Y. TOM, Sc. D., Chairman of the Environmental Quality Commission, State of Hawaii, hereby certify that the foregoing rules and regulations were adopted by the Commission on the 3rd day of April, 1975.

ALBERT Q. Y. TOM, Sc. D.
Chairman
Environmental Quality Commission

The foregoing rules and regulations are hereby approved as to form this 14th day of April, 1975.

ROBERT R. TAYLOR
Deputy Attorney General

The foregoing rules and regulations are hereby approved this 22nd day of May, 1975.

GEORGE R. ARIYOSHI
Governor of Hawaii

The foregoing rules and regulations were adopted on April 3, 1975, following public hearings held on November 20, 1974 at Hilo, Hawaii; November 21, 1974 at Kona, Hawaii; November 22, 1974 at Kahului, Maui; November 25, 1974 at Lihue, Kauai; November 26, 1974 at Kaneohe, Oahu; and November 27, 1974 at Honolulu, Oahu; after public notice was published in the Garden Island on November 4, 1974, the Hawaii Tribune-Herald on October 31, 1974, the Maui News on November 2, 1974, the Honolulu Advertiser on October 30, 1974 and October 31, 1974, and the Honolulu Star-Bulletin on October 30, 1974 and October 31, 1974.

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