HAWAII STATE ENVIRONMENTAL REVIEW PROCESS

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HAWAII STATE ENVIRONMENTAL REVIEW PROCESS

I. Introduction

The State of Hawaii Department of Health (DOH) must conduct an environmental review of projects funded under the Clean Water State Revolving Fund (CWSRF), 33 U.S.C. §§1381-1387, and the Drinking Water State Revolving Fund (DWSRF), 42 U.S.C. §300j-12 as required under the Code of Federal Regulations[1] (CFR), using the United States Environmental Protection Agency (USEPA) approved State Environmental Review Process (SERP). In addition, the State must comply with the Federal cross-cutting authorities set forth in 40 CFR §35.3145 for the CWSRF, and 40 CFR §35.3575 for the DWSRF.

An environmental review is defined by Hawaii Revised Statutes (HRS) Chapter 343 "Environmental Impact Statements" and the Hawaii Administrative Rules (HAR) Chapter 11-200. *Guide to the Implementation and Practice of the Hawaii Environmental Policy Act* (2012 Edition), also known as the OEQC Guidebook, prepared by the Office of Environmental Quality Control (OEQC), (Attachment 1), outlines the requirements of the existing state laws. Where there are differences between the Hawaii Statutes/Rules and the applicable USEPA statutes and regulations, the Project must comply with the USEPA statutes and regulations in order to qualify for the State CWSRF or DWSRF Program's loan.

The Final Loan Agreement will not be signed if the SERP is incomplete.

II. General Process

1. The applicant will conduct an environmental review for the project.
2. The applicant will complete an Environmental Review Checklist (Attachment 2) to indicate whether the project is categorically exempt (exempt); requires an environmental assessment (EA); requires an Environmental Impact Statement (EIS); or requires an EA or EIS reaffirmation. The applicant will submit the checklist along with relevant documents to the SRF Program.
3. For non-exempt projects, the applicant will notify the SRF Program when it has submitted the draft EA/EIS or reaffirmation EA/EIS to OEQC[2]. (Further details are provided in the "Environmental Documents Requirements" section below.)
4. The DOH SRF engineer will review the environmental documents and Environmental Review Checklist for completeness and accuracy.
5. If the SRF engineer concurs and approves with the applicant's proposed decision, the engineer will:

[1] For DWSRF, refer to 40 CFR §35.3580. For CWSRF, refer to 40 CFR §35.3140.

[2] Any documents submitted by the applicant to OEQC may be accessed on the OEQC website at http://health.hawaii.gov/oeqc/.

a. indicate concurrence and approval for the finding of no significant impact (FONSI) or record of decision (ROD) with the applicable Environmental Review Checklist, and post a Public Notice of concurrence and approval onto the SRF website after responding to any comments received under the 30-day comment period; or
b. indicate concurrence and approval for a reaffirmation of an EA/FONSI and post a Public Notice of concurrence onto the SRF website; or
c. post a Public Notice of an Exempt Project Determination onto the SRF website.

6. The SRF Program will work with the applicant to resolve any issues it may have found.

Note

The SRF program reserves the right to refuse any SRF loan to any applicant if, for any reason, it determines that the proposed project has the potential to impact the environment in ways that the applicant has not considered or has not prepared mitigation measures for.

III. Environmental Decision Documents

A proposed project will require some form of environmental review resulting in the preparation of an environmental decision document such as an exemption document, EA/FONSI, or EIS/ROD. In all cases, when the applicant submits any environmental documents to OEQC, the applicant must notify the SRF Program.

PRIOR-DECISION DOCUMENTS

DOH must fully document the information and procedures used to issue its decision to reaffirm or modify a decision contained in a previously issued categorical exclusion, EA/FNSI, or EIS/ROD following a mandatory five (5) year environmental reevaluation of a proposed project or activity. If the prior-decision document is older than five (5) years and there are no changes to the project, the SRF Program will reaffirm the document and publicize the reaffirmation or modification on the SRF Program website. If there are changes to the project, the DOH must ensure that the document reflects the changes, and if applicable, provide the public with an opportunity to comment on the modified document.

Any prior-decision document submitted must contain information applicable and pertinent to the proposed project, and have logical relevancy to and bearing on the action being proposed. In particular, the scope of the proposed project must be the same project identified in the prior-decision document.

When prior-decision documents are submitted, an evaluation of the current environmental impacts of the proposed project must be conducted. New impacts not addressed in the prior-decision documents must be addressed in the current environmental document. If there are no new impacts,

the SRF Program will reaffirm the prior decision. If the prior decision document is an EIS/ROD and new impacts will require the preparation of a supplemental EIS, then the project will not be eligible for funding under the SRF Programs.

EXEMPT PROJECTS

A project may be declared exempt from the environmental assessment or environmental impact statement review requirements if the project is found to have no significant environmental effects and falls within one or more of the exempt categories below:

a. Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change or use beyond that previously existing.
b. Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small equipment and facilities and the alteration and modification of same. This includes water or sewage facilities and related facilities to serve such structures or facilities and acquisition of utility easements.
c. Minor alterations in the conditions of land, water, or vegetation.
d. Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.
e. Construction or placement of minor structures accessory to existing facilities.
f. Interior alterations involving things such as partitions, plumbing, and electrical conveyances.
g. Demolition of structures within the footprint of the existing facility, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. Section 470, as amended, or chapter 6E, HRS;
h. Zoning variances except shoreline set-back variances.
i. Continuing and administrative activities including, but not limited to purchase of supplies and personnel-related actions.

All exemptions listed in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant; when a proposed action is known, or expected to cause significant public controversy about a potential environmental impact; when a proposed action is known or expected to conflict with federal, state or local government, or Native Hawaiian Organization resource-protection, or land-use laws or regulations; or when an action that is normally insignificant in its impact on the environment may be significant in a particularly

sensitive environment. The Federal cross-cutting authorities in 40 CFR §35.3145 and 40 CFR §35.3575 also apply to exempt projects.

The DOH SRF engineer will review the environmental documents and Environmental Review Checklist for completeness and accuracy using Attachment 2A or 2B. If the SRF engineer concurs and approves the applicant's proposed decision, the engineer will post a Public Notice of an Exempt Project Determination onto the SRF website (Attachment3.

ENVIRONMENTAL ASSESSMENT PROJECTS

For non-exempt projects, a FONSI or mitigated FONSI must be submitted with the Final EA. The EA FONSI or mitigated FONSI presents the basis for the decision, contains a comparative evaluation among alternatives including the beneficial and adverse consequences on the environment, may specify the environmentally preferable alternative, identifies the selected alternative, and provides information on the adopted means to avoid, minimize or mitigate environmental impacts. Population projections used in the EA should be derived from the latest population projection series developed by the State Department of Business, Economic Development and Tourism.

For Federally funded projects, the EA must address the following areas to meet SERP requirements:

1. A range of feasible alternatives must be considered, including the "no action" alternative. The analysis of alternatives and impacts shall include:
    a. Designation of a study area comparable to the final system;
    b. The primary (direct) and secondary (indirect) impacts for all feasible alternatives;
    c. Present and future conditions;
    d. Consistency with population projects used to develop State implementation plans under the Clean Air Act;
    e. The impacts on land use, and other social parameters including recreation and open-space considerations;
    f. The cumulative impacts such as anticipated community growth (residential, commercial, institutional, and industrial) within the project study area;
    g. The impacts on other anticipated public works projects (if any) and the planned coordination with them; and
    h. The impacts on any individual sensitive environmental issues that have been identified through the public participation program.
2. The mechanisms to implement mitigation measures to ensure that the project is environmentally sound; devising appropriate near-term and long range measures to avoid, minimize or mitigate adverse impacts.

3. Public Notices and a formal public comment period are required for all projects requiring the preparation of an environmental assessment. In the case of an EA FONSI or mitigated FONSI, the applicant must provide public notice via the OEQC website for the 30-day public comment period or the OEQC *Environmental Notice*, which is published twice per month. A public hearing or meeting must be held for all projects except for those having little or no environmental effect.
4. The DOH SRF engineer will review the environmental documents and Environmental Review Checklist for completeness and accuracy. If the SRF engineer concurs and approves with the applicant's proposed decision, the engineer will indicate concurrence and approval for the finding of no significant impact (FONSI) with the applicable Environmental Review Checklist, and post a Public Notice of concurrence and approval onto the SRF website after responding to any comments received under the 30-day comment period (Attachment 3).

ENVIRONMENTAL IMPACT STATEMENT FOR PROJECTS

If an EIS is required for the project, the SRF Programs will require the applicant to provide a Published Notice of Intent to initiate an EIS.

The applicant will be required to prepare and submit a Draft EIS (DEIS) to the SRF Programs for review and comments.

Public Notices and a formal public comment period are required for all projects requiring the preparation of an EIS. For all DEIS, the applicant must provide public notice via the OEQC website for the 45-day public comment period or the OEQC Environmental Notice, which is published twice a month. A 30-day comment period on a Final EIS (FEIS) is required prior to issuance of a Record of Decision (ROD). A public hearing or meeting must be held for all projects requiring an EIS.

An EIS shall include the following:

a. A concise summary and table of contents.
b. A statement of purpose for the project.
c. A detailed project description including maps, technical data, economic and cultural effects and historical perspective.
d. An analysis of alternatives to the proposed project and an explanation why the alternatives were rejected.
e. A description of the environmental setting.
f. A statement of the relationship of the proposed action to land use plans, policies and controls for the affected area.
g. A description of the probable impacts of the project including the direct, indirect and cumulative impacts, as well as impacts on both the natural and human environments.

h. A description of the relationship between short-term uses of environmental resources and long-term productivity (sustainability analysis).
i. A statement of the unavoidable environmental impacts caused by the project and a rationale for proceeding with the project in light of these impacts.
j. A consideration of all mitigation measures proposed to avoid, minimize, rectify, or reduce the project's adverse impacts.
k. A summary of unresolved issues and a discussion of how such issues will be resolved.
l. A listing of all agencies, organizations and individuals consulted during the preparation of the document.
m. Reproduction of all substantive comments received during the study process and the responses to comments.

Following the public comment period, the applicant shall prepare a FEIS, consisting of all of the following:

a. The DEIS;
b. An analysis of all reasonable alternatives and the no action alternative;
c. A summary of any coordination or consultation undertaken with any federal, state, or local government;
d. A summary of persons commenting on the DEIS;
e. The Applicant's responses to significant comments received;
f. The names and qualifications of the persons primarily responsible for preparing the EIS; and
g. Any other information added by the Applicant.

After issuance of a FEIS, the Applicant shall provide for a 30-day comment period on the FEIS prior to preparing and issuing a ROD that will contain the Accepting Agency's decision whether to proceed or not to proceed with a project. A ROD issued with a decision to proceed shall include any commitments to mitigation, an explanation if the environmental preferred alternative was not selected, and any responses to substantive comments on the FEIS.

The DOH SRF engineer will review the environmental documents and EIS Review Checklist for completeness and accuracy. If the SRF engineer concurs and approves with the applicant's proposed decision, the engineer will indicate concurrence and approval of the Record of Decision (ROD) with the applicable EIS Review Checklist, and post a Public Notice of concurrence and approval onto the SRF website after responding to any comments received under the 30-day comment period.

IV. CROSS-CUTTING AUTHORITIES

Exemptions, EAs, EISs and reaffirmation EAs must also address the impacts of the proposed project on other Federal environmental "cross-cutting" authorities[3] to include:

1. Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1)
2. Bald and Golden Eagle Protection Act (16 U.S.C. §§668-668c)
3. Clean Air Act (42 U.S.C. § 7506(c))
4. Coastal Barriers Resource Act (16 U.S.C.§§3501-3510)
5. Coastal Zone Management Act (16 U.S.C.§§ 1451-1464)
6. Endangered Species Act (16 U.S.C. §§ 1531-1543)
7. Environmental Justice (Executive Order 12898)
8. Farmland Protection Policy Act (7 U.S.C. §§ 4201-4209)
9. Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-664)
10. Floodplain Management (Executive Order 11988 , as amended by Executive Orders 12148 and 13690.
11. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq*.
12. Marine Mammal Protection Act (16 U.S.C. §§1361 *et seq.)*
13. Migratory Bird Treaty Act, 16 U.S.C. §§ 703 *et seq*.
14. National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq*.)
15. Protection of Wetlands (Executive Order 11990 , as amended by Executive Order 12608)
16. Rivers and Harbors Act (33 U.S.C. § 403)
17. Safe Drinking Water Act (42 U.S.C. § 300f-300j-9)
18. Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq*.)

Refer to Attachment 4A and 4B for the list of responsible agencies and consultation requirements involved with the review of the Federal environmental cross-cutting authorities.

FEDERAL CONSULTATION

The State will comply with all applicable federal authorities, and will require all recipients to comply with all applicable federal authorities (referred to as the federal cross-cutting authorities) pursuant to the 40 CFR §35.3145 and 40 CFR §35.3575.

[3] This SERP only addresses the Environmental cross-cutting authorities. It does not include the Social Policy and Economic federal cross-cutting authorities. For more information on the Social Policy and Economic cross-cutting authorities see: https://www.epa.gov/sites/production/files/2015-08/documents/crosscutterhandbook.pdf.

If more than one federal agency is involved in a project, USEPA, with assistance from the State, will coordinate with the other federal agency to determine federal lead.

All SRF projects shall contain evidence that the State SRF staff performed an analysis considering potential impacts to protected resources, species, habitats, etc., addressed by the applicable federal environmental cross-cutting authorities as documented in the-exemption document, environmental assessment, environmental impact statements, reaffirmation EA or reaffirmation EIS.

Consultation under the Endangered Species Act (ESA)

On July 22, 2016, the USEPA notified the U.S. Fish and Wildlife Service (USFWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration/National Marine Fisheries Service (NMFS) that it was designating DOH to be USEPA's non-federal representative pursuant to 50 CFR §402.08 for purposes of initiating the consultation process and preparing a biological assessment, if necessary, under Section 7 of the ESA for certain projects funded under the Hawaii Drinking Water State Revolving Fund and the Hawaii Clean Water State Revolving Fund Programs. (Attachments 5A and 5B).

The State may make a "no effect" determination under ESA and conduct the appropriate public notice procedures.

The State may initiate and undertake informal consultation under Section 7 of the ESA. However, the USEPA or other lead Federal agency/department must make all "not likely to adversely affect" determinations for informal consultation and seek concurrence under the ESA from the USFWS and/or NMFS as applicable. Concurrence must be in writing. Any project modifications and/or conservations measures identified by the USFWS and/or NMFS as part of the "not likely to adversely affect" concurrence should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

The State may not initiate formal consultation under Section 7 of the ESA. The USEPA or other lead Federal agency/department must initiate formal consultation and seek a written biological opinion from FWS and/or NMFS under the ESA. As a result of its Biological Opinion, USFWS and/or NMFS often requires project modifications and/or reasonable and prudent conservation measures to avoid jeopardy. Any such modifications and/or measures identified in the Biological Opinion should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

Consultation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

On July 22, 2016, USEPA notified NMFS that it was designating DOH as the non-federal representative pursuant to 50 CFR §600.920(c) for purposes of initiating the consultation process

with NMFS under Section 305(b)(2) of the Magnuson-Stevens Act (MSA) for projects funded under the DWSRF and CWSRF Programs. (Attachment 5A).

Depending upon the circumstances, the State may initiate consultations with NMFS on Essential Fish Habitat as part of an ESA consultation on the project. Alternatively, after discussions with NMFS and USEPA, and with USEPA's agreement, the State may utilize one of the other consultation approaches outlined in 50 CFR §600.920. The USEPA ultimately remains responsible for compliance with the Magnuson-Stevens Act.

Any project modifications and/or conservation measures identified by NMFS should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

- **Consultation steps under the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act**

i. ***No Effect*** (DOH makes determination):
   a. DOH will
      i. Collect and review appropriate information, make determination, and document the determination.
      ii. Provide documentation of the No Effect determination in an email to the USEPA project officer.
   b. The USEPA will maintain a copy of the No Effect determination documentation.

ii. ***May Affect, Not Likely to Adversely Affect*** **(NLAA)** listed species or its designated critical habitat (USEPA makes determination after DOH conducts informal consultation with the Service(s)):
   a. DOH will
      i. Collect and review appropriate information, engage Service(s) in an early consultation, and document the consultation effort with the Service(s).
      ii. Coordinate with the applicant and the Service(s) and resolve any issues.
      iii. Conduct informal discussions with the Service(s).
      iv. Request assistance from USEPA in resolving any issues raised by the Service(s).
      v. Send USEPA a NLAA recommendation, along with copy of all relevant informal consultation documents (e.g. biological assessment/report evaluation, species list, mitigation/conservation measures, records of communications, etc.).
   b. The USEPA will
      i. Assist DOH as needed.

ii. To the extent USEPA agrees with the DOH's NLAA recommendation, send a NLAA determination letter to the Service(s) (copy DOH) seeking concurrence.

DOH will not execute a financing agreement for a CWSRF or DWSRF project until it has received concurrence on a NLAA determination from the Service(s).

iii. ***Formal Consultation*** where the proposed project is likely to adversely affect species or critical habitat, USEPA will initiate formal consultation under Section 7 (USEPA makes determination):

a. DOH will
   i. Collect and review appropriate information and engage Service(s) prior to the initiation of formal consultation.
   ii. Request assistance from USEPA, as needed.
   iii. Send USEPA a letter requesting initiation of formal consultation, providing all relevant information and documents necessary for the consultation, including the Biological Assessment or Biological Evaluation.
   iv. Assist USEPA in resolving any issues raised by the Service(s) regarding the formal consultation.

b. The USEPA will
   i. Communicate with, and facilitate communication among, DOH and the Service(s), as needed.
   ii. Send a letter to the Service(s) (copy DOH) requesting formal consultation, enclosing the letter and other relevant information and documents from DOH.
   iii. Provide any draft Biological Opinions received from the Service(s) to the DOH and consider any comments from DOH.
   iv. Work with the Service(s) and the DOH until any issues are resolved and formal consultation is completed.

DOH will not execute a financing agreement for a CWSRF or DWSRF project until formal consultation is complete. Formal consultation usually is completed with the issuance of a final Biological Opinion from the Service(s).

iv. ***Likely to Jeopardize Proposed Species/Adversely Modify Proposed Critical Habitat*** (USEPA makes determination):

a. DOH will provide assistance to USEPA as requested.
b. The USEPA will request a conference with the proposing Service(s).

Consultation under the National Historic Preservation Act (NHPA) and Archaeological and Historic Preservation Act (AHPA)

On October 19, 2015, the USEPA notified the Hawaii State Historic Preservation Office (SHPO) and numerous Native Hawaiian Organizations that it was designating DOH to act on USEPA's behalf when initiating the NHPA consultation process in connection with projects funded under the DWSRF. (Attachment 6A). However, USEPA will remain responsible for participating in the consultation process when: 1) DOH determines that the "Criteria of Adverse Effect" under 36 CFR §800.5 applies to an undertaking; 2) there is a disagreement between DOH and the SHPO or Native Hawaiian Organizations regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; 3) there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or 4) there is potential for a foreclosure situation or intentional adverse effects as described under 36 CFR §800.9 (b) and (c).

In addition, pursuant to the terms of the 1990 Programmatic Agreement on Historic Preservation for the CWSRF (Attachment 6B), the State shall carry out the requirements of federal regulation 36 CFR §§800.4 through 800.6, and other applicable sections of 36 CFR Part 800. The State shall seek concurrence for compliance with Section 106 of the NHPA and for cultural resources protected under the NHPA as applicable. USEPA will participate in the Section 106 process under the NHPA to the extent mutually agreed upon by the USEPA and the State, but at a minimum the EPA must be notified by the State if, after routine consultation or coordination with the SHPO, disputes remain.

The SRF Program shall:

1. Directly initiate the Section 106 consultation process with SHPD for each of its affected projects; and
2. Prepare any required documents and responses for SHPD submittal and approval (e.g., archaeological monitoring plan).

Please refer to Attachments 6C for the Section 106 Process Flowchart.

The USEPA retains the responsibility for compliance with the AHPA requirements. The State will coordinate with USEPA to complete the consultation with the National Park Service where appropriate.

Any project modifications and/or mitigation measures identified by the applicant, State, SHPO and/or Native Hawaiian Organizations should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

The USEPA or other lead federal agency/department remains legally responsible for all determinations issued under the AHPA, ESA, Magnuson-Stevens Act, and NHPA.

Guide to the Implementation and Practice of the Hawaii Environmental Policy Act

2012 Edition

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Message from the Director:

This Guidebook is a revision of the "Guidebook for the Hawaii State Environmental Review Process" published in 2004 by the Office of Environmental Quality Control (OEQC), and is intended to provide a clear and comprehensive explanation of Hawaii Environmental Policy Act (HEPA), its practice, and its implementation.

This Guidebook will allow for individuals from private sectors, members of the community, as well as different local government agencies to gain a better understanding of the "Environmental Review Process," also called the "Environmental Impact Statement process." However, this Guide Book does not constitute legal advice from the OEQC, and shall not be viewed as legally binding. It is intended to be for general informational use only, and readers should consult HRS Chapter 343, HAR 11-200, and decisions of the Hawaii appellate courts prior to substantive decision-making.

For more information and additional resources please visit our website: http://hawaii.gov/health/environmental/oeqc/index.html
If it would be helpful, we would also be pleased to schedule a special Chapter 343 training workshop specifically for your individual office or agency.

As always, if we can be of any assistance whatsoever please do not hesitate to call.

Aloha,

Gary Hooser, Director
Office of Environmental Quality Control

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THIS GUIDEBOOK IS FOR GENERAL INFORMATION ONLY. CONSULT THE STATUTE AND THE RULES FOR SPECIFIC APPLICABILITY, JUDICIAL CHALLENGE AND DETAILED STEPS TO IMPLEMENTATION AND PROCESS OF HEPA.

Chapter 1: Introduction to the Hawaii Environmental Policy Act (HEPA) and Chapter 343, HRS

1.1 Goals of this Chapter

The reader will become familiar with the following:

A. Language, basic concepts, and terms used in the Hawaii Environmental Policy Act (HEPA), as codified in Chapter 343, Hawaii Revised Statutes (HRS), (the Environmental Assessment [EA] and Environmental Impact Statement [EIS] process).

B. The origin of the National Environmental Policy Act (NEPA) of 1969 and how it provided a model for the development of HEPA in 1974.

C. The differences between HEPA and NEPA:

HEPA	NEPA
• Separates disclosure from permitting/ implementation processes	• Constitutes a process that is under the oversight of one federal agency from start to finish
• Draws a distinct boundary between the disclosure process and the implementation (or permitting) processes	• Does not draw a distinct boundary between the disclosure process and the implementation (or permitting) processes
• Review triggered by any of nine factors	• Review triggered by "major" federal action significantly affecting human environment

D. The different definition and context of terms used in both HEPA and NEPA. Some of these terms include "significance," "environmental assessment," "environmental impact statement," "finding of no significant impact," etc. For the purposes of this guidebook, these terms will be used as defined in HEPA. However, when discussed as used in NEPA and other state/county processes not covered by HEPA, such usage will be qualified in parentheses.

1.2 Foundations of the Hawaii Environmental Policy Act

HEPA includes the following statutes and administrative rules:

A. HRS Chapter 343, Environmental Impact Statements

B. HAR 11-200, Environmental Impact Statement Rules

C. HAR 11-201, Environmental Council Rules of Practice and Procedure

The Chapters above can be found on the OEQC website:
http://www.hawaii.gov/health/environmental/oeqc/index.html

1.3 Brief Historical Overview

Table 1-1 presents a brief chronology of important historical events involving HEPA. The table describes the passage of legislation, creation of administrative bodies, and important court cases that have shaped the law and practice of HEPA. The table is not intended to be a complete or exhaustive list. The Final Report on Hawaii's

Environmental Review System contains a more comprehensive discussion of additional relevant events.

Table 0-1. Chronology of Important HEPA Events

Date	Event	Additional information
1969	The National Environmental Protection Act passed into law.	Public Law 91-190, approved, January 01, 1970.
1970	Governor John A. Burns signed SB 1132 as Act 132, Session Laws of Hawaii (SLH), Regular Session of 1970, creating the Office of Environmental Quality Control (OEQC), the Environmental Center (Center), and the Environmental Council (EC) (HRS Chapter 341).	All were housed in the Office of the Governor except for the Center, which was housed in the University of Hawaii.
1971	Governor John A. Burns issued an executive order requiring State agencies and county agencies that used State or county funds or the use of State or County lands to prepare an EIS for major actions under the oversight of the OEQC.	
1973	The Legislature created a Temporary Commission on Environmental Planning that proposed legislation for EISs in the State of Hawaii.	
1974	The Governor signed Act 246, Session Laws of Hawaii, Regular Session of 1974, later known as the HEPA and patterned after the NEPA. Act 246 established the Environmental Quality Commission (EQC) and the EIS process (HRS Chapter 343). The State also passed the State Environmental Policy, HRS Chapter 344:	Act 246 created the EIS process under the authority of the EQC, enabling it to publish notice of documents for public comment in a periodic bulletin (then known as the *EQC Bulletin*), and to promulgate rules to implement the provisions of the statute. Chapter 344 contains comprehensive environmental policy, goals, and objectives.
1983	The Governor signed Act 140, Session Laws of Hawaii, Regular Session of 1983. The Act abolished the EQC and divided its personnel, equipment and responsibilities between the OEQC and the EC. The OEQC received the personnel and equipment of the EQC, with a mandate to staff the EC.	The OEQC was made responsible for publishing the periodic bulletin of Section 343-3, HRS, while the EC was made responsible for rulemaking and the review and concurrence of agency exemption lists. Both the OEQC and the EC were attached to the Department of Health for administrative purposes.
1985	The EC promulgated Chapter 200, Title 11, Hawaii Administrative Rules (HAR), implementing the provisions of Chapter 343, HRS.	Based substantively on the Rules and Regulations of the former Environmental Quality Commission.
1992	Act 241, SLH 1992, amended Chapter 343, HRS by requiring a 30-day public comment period on agency or applicant actions for which the proposing agency or approving agency anticipates a "Negative Declaration" "Neg Dec").	"Negative declaration" later termed a "Finding of No Significant Impact" (FONSI).

Date	Event	Additional information
1996	The EC issues its first amendment and compilation of Chapter 200, Title 11, HAR, effectively implementing the provisions of Act 241, SLH 1992.	
1997	The OEQC published its "Guidebook for the Hawaii State Environmental Review Process." *Kahana Sunset Owners Association v. County of Maui et alia.*	The Guidebook introduced the terms "Draft EA" and "Final EA". The county's determination that a completely new drainage system for over 300 residences was within the exemption for HEPA's requirements for installation of drains within streets and highways was inconsistent with both the letter and intent of rules set forth under Section 11-200-8, HAR.
1998	*Kepo`o v. Watson, et alia*	The requirements of HEPA apply to lands under the jurisdiction of the Department of Hawaiian Home Lands.
1999	*Citizens for the Protection of the North Kohala Coastline et alia v. County of Hawaii, Chalon International Inc., et alia*	HEPA was triggered when the applicant proposed the use of state land (proposed construction of two underpasses under Akoni Pule Highway) for golf carts to travel a golf course bisected by a state highway.
2004	The OEQC issued a revised "Guidebook for the Hawaii State Environmental Review Process".	Hereinafter referred to as "The 2004 Guidebook".
2006	*Sierra Club v. Office of Planning (Koa Ridge)*	Developer's request to reclassify agricultural land as urban required an EA where State land was used for water and sewer lines under State highway.
2007	*Sierra Club v. Department of Transportation (Superferry 1)*	DOT erred in finding exempt Superferry dock improvements without considering whether environmental impacts of the whole Superferry operation, secondary, as well as primary, would be significant.
2008	*'Ohana Pale Ke Ao v. Board of Agriculture*	HEPA required the preparation of an EA for importing and growing genetically engineered algae at the state's research and technology park because it involves a use of State land and was not within the scope of prior NELHA EISs.
2009	*Unite Here! Local 5 v. City and County of Honolulu and Kuilima Resort*	The Turtle Bay expansion project must do a supplemental EIS; it could not rely on a 20 year old EIS where record showed changed environmental impacts.

1.4 Understanding of the HEPA Process

The authorities governing the HEPA process include:

A. The text of the statute (Chapter 343, HRS) and its implementing administrative rules (Chapters 11-200, and 11-201, HAR, Department of Health
B. The State Environmental Policy (Chapter 344, HRS)
C. The enumerated and written advisory opinions of the Attorney General of the State of Hawaii

D. The declaratory rulings of the Environmental Quality Commission (EQC) and the Environmental Council (EC)
E. The appellate rulings of the Intermediate Court of Appeals and the Supreme Court of the State of Hawaii. Several studies published by the Center of the University of Hawaii on the HEPA process are also instructive

Due to space limitations, the text of the HEPA Statute and rules have not been included in this Guidebook. Please refer to the OEQC website for the current Statute and rules, at *http://www.hawaii.gov/health/environmental/oeqc/index.html*

The environmental review process described in the findings and purpose section of Chapter 343, HRS, necessitates integrating citizen concerns into the planning process and forewarning decision makers of potential significant environmental effects should implementation take place.

Since its inception, the HEPA process has bifurcated into two separate procedural tracks:
A. Agency actions (set forth in Section 343-5(b), HRS); refers to those proposed by a government agency
B. Applicant actions (set forth in Section 343-5(c), HRS); refers to those that are initiated by a private party and "triggers" an environmental review

To learn more about how HEPA applies specifically to agency actions, refer to Chapter 6, as well as the flowcharts in Exhibits 6-1 and 6-2.

To learn more about how HEPA applies specifically to applicant actions, refer to Chapter 7, as well as the flowcharts in Exhibits 7-1 and 7-2.

To better understand the HEPA process, review the terms used in the HEPA very carefully. Chapter 8, Glossary, includes an explanation of these terms.

1.5 The Structure and Design of the HEPA Process

The objective of HEPA is set forth in the findings and purpose section of the statute (Section 343-1, HRS), which states in pertinent part that:

> *"[t]he legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and Counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole."*

At the outset it is important to articulate how one complies with the "environmental review process" in HEPA.

HOW TO COMPLY WITH THE HEPA PROCESS:

When an action triggers Chapter 343, HRS, the agency responsible for compliance can clear the process through:

1. An agency declares an action exempt from the preparation of an EA (see Section 11-200-8, HAR).
2. An agency declares a FONSI based on a final environmental assessment (FEA) (see Section 11-200-11.2, HAR).
3. An entity (the approving agency, the Governor, or the Mayor) determines that a final environmental impact statement (FEIS) for a proposed action meets the criteria for acceptability (see Section 11-200-23, HAR) or for applicant actions, the approving agency fails to make a determination on the acceptability of a FEIS within 30-days from the date of receipt (see Section 343-5(c), HRS).

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

Approving agency – An agency that issues an approval prior to actual implementation of an action.

1.6 Statutory Trigger Conditions for HEPA

The specific instances when a proposing agency or an approving agency must prepare an EA (for an action not declared exempt under Section 11-200-8, HAR) derive from Section 343-5(a), HRS, are as follows:

Table 0-2. "Triggers" Initiating HEPA

	Instances	Agency Responsible for Complying with this Trigger
1.	Use of State or County lands or use of State or County funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an EA for proposed uses under Section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to Section 205-5(b).	The agency with title to the land or is using funds.
2.	Use of any land classified as conservation district by the state land use commission under Chapter 205.	Office of Conservation and Coastal Lands of the Department of Land and Natural Resources (DLNR).
3.	Use within a shoreline area as defined in Section 205A-41. The shoreline area in question is defined by county ordinance and consists of a predetermined distance going inland from the certified shoreline. In the City and County of Honolulu, this is forty-feet.	The respective county planning department.

	Instances	Agency Responsible for Complying with this Trigger
4.	Use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E.	The respective county planning department.
5.	Use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District".	The Department of Planning and Permitting of the City and County of Honolulu.
6.	Any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county.	The respective county planning department.
7.	Any reclassification of any land classified as a conservation district by the state land use commission under Chapter 205.	The Land Use Commission, except in cases involving less than fifteen-acres (which cases are processed by the respective county planning department).
8.	Any construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: A. Any land classified as a conservation district by the state land use commission B. A shoreline area C. Any historic site as designated in the National Register or Hawaii Register	The respective county planning department where the project is located processes the clearance of this trigger
9.	Propose any: A. Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single family dwellings or the equivalent B. Waste-to-energy facility C. Landfill D. Oil refinery E. Power-generating facility	The agencies of the State or County government that issue discretionary approvals for the listed items.

1.7 Thirteen Administrative Criteria for Significance

In most cases, an agency determines that an action may have a significant impact on the environment if it meets any of the following criteria (from Section 11-200-12, HAR):

A. Involves an irrevocable commitment to loss or destruction of any natural or cultural resource
B. Curtails the range of beneficial uses of the environment
C. Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in [Chapter] 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders
D. Substantially affects the economic or social welfare of the community or State
E. Substantially affects public health
F. Involves substantial secondary impacts, such as population changes or effects on public facilities
G. Involves a substantial degradation of environmental quality
H. Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions
I. Substantially affects a rare, threatened, or endangered species, or its habitat
J. Detrimentally affects air or water quality or ambient noise levels

K. Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal waters
L. Substantially affects scenic vistas and view planes identified in county or state plans or studies
M. Requires substantial energy consumption

It is important to note that in considering significance of potential environmental effects, the agency (either proposing or approving) must consider the sum of the effects on the quality of the environment and that the same agency must evaluate the overall and cumulative effects of a proposed action: the expected direct and indirect consequences, and the cumulative, as well as short-term and long-term effects of the proposed action.

Uses of the thirteen significance criteria include the following:

A. Exemption Declarations: Under Section 11-200-8, HAR, proposed actions that have "minimal or no significant effect" on the environment can be declared exempt from the preparation of an EA by the agency.
B. Environmental Assessments:
    1. Where an agency anticipates at the outset that a non-exempted proposed action will NOT have a "significant effect" on the environment, the agency is required to prepare a draft environmental assessment (DEA) that supports its determination that it anticipates that an EIS will not need to be prepared (see Anticipated Finding of No Significant Impact (FONSI), Section 11-200-11.1, HAR) and notify the OEQC.
    2. Where an agency determines at the outset that a non-exempted proposed action will have a "significant effect" on the environment, the agency will prepare a FEA that supports its determination that an EIS must be prepared (see Environmental Impact Statement Preparation Notice (EISPN), Section 11-200-11.2, HAR).

1.8 Statutory Exclusions

In Section 1.6, above, the nine statutory trigger conditions were articulated. Certain actions are excluded from the HEPA process. These are as follows:

A. Section 343-5(a)(1), HRS, such as the use of State or county funds to be used for feasibility or planning studies that the agency has not approved, adopted, or funded, or the use of funds to be used for the acquisition of unimproved real property, *provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under Section 205-2(d)(11), HRS, or 205-4.5(a)(13), (*for agricultural tourism*) HRS shall only be required pursuant to Section 205-5(b), HRS*
B. Fossil-fueled, electricity-generating facilities *where the electrical output rating of the new equipment does not exceed 5.0 MW*. Expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, *where the incremental electrical output rating of the new equipment does not exceed 5.0 MW*. (Section 343-2, HRS, definition of power generating facility)
C. Individual wastewater system or a wastewater treatment unit *serving fewer than fifty (50)single family dwellings or the equivalent* (Section 343-5[a][9], HRS)
D. Actions proposing any new county general plan or amendments to any existing county general plan *initiated by a County* (Section 343-5(a)(6), HRS)

E. Purchase of the assets of the Waiahole water system (Section 343-6.5, HRS)
F. Proposed reconstruction, restoration, repair, or use of any Hawaiian fishpond, *provided that compliance with certain conditions in Section 183B-2, HRS is met*.
G. Affordable housing, *provided that compliance with certain conditions in* Section 201H-38, HRS *is met*
H. Broadband infrastructure, *provided that compliance with certain conditions in Act 151, SLH 2011, is met*

1.9 Phased Actions - Project Segmentation

Section 11-200-7, HAR, states that "[a] group of actions proposed by an agency or an applicant shall be treated as a single action when:

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

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

1.10 Early Consultation and Data Gathering

For a proposed action, at the earliest practicable time, Section 11-200-9, HAR, requires that an agency (proposing or approving) needs to consult (or direct an applicant to consult) with the respective county planning department(s) and other agencies or individuals that might have jurisdiction or expertise with respect to the proposed action. Early consultation is the most important element of the HEPA process. Who needs to be consulted? Which agencies and individuals to consult will depend on both the regulatory context, as well as the environmental context.

Consider the following example related to regulatory context. If you are seeking a discretionary approval as an applicant, it would be to your advantage to contact each of the approving agencies processing the various discretionary permits for your proposed action. Where the action involves more than one agency potentially responsible for complying with the requirements of Section 343-5(c), HRS, as the approving agency, you should speak with the agencies involved to ascertain if agreement can be reached as to which of them will process the EA and any subsequent EIS. Where such agreement cannot be reached, the statute mandates that the Office of Environmental Quality

Control (OEQC) shall determine this after consulting with each of the potential approving agencies, among other things.

As an example of environmental context, you are a county agency proposing to construct a new road linking two existing towns. You first need to examine the "environment" in which this road will be placed. Refer to the definition of "environment" (see Chapter 8, Glossary), Table 1-3, as well as Exhibit 1-1 at the end of this chapter, which presents the guidelines for assessing cultural impacts.

Federal agencies are valuable sources of information. Some Federal agencies, like the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency issue permits to State/County agencies and other persons. The U.S. Environmental Protection Agency may delegate its permitting and enforcement responsibilities to various State agencies under the auspices of a grant agreement.

Often, during the early consultation process (and also in the various other phases of the Chapter 343, HRS, process) various agencies, individuals, or organizations may be contacted a number of times, depending on information you receive and the questions that it raises. Early consultation is an *iterative process* to see if common understanding can be reached with the associated agencies, or to see if any information received may lead to more iterative queries until the information of interest is obtained / discovered.

Iterative Process *= A process for arriving at a decision or result in a stepwise approach with new and more detailed information at each step*

The ultimate goal of early consultation is the gathering of information or data. Data is either qualitative or quantitative, or a combination of both. At each iteration of consultation, you will need to ascertain the reliability of the data you have gathered. Is the data commonly accepted knowledge? Is the data reproducible? Is the person providing the data recognized as an expert in his or her area of expertise? It is to your advantage to have your data examined by several persons (i.e., "peer-reviewed") in advance of a public comment period prior to publishing it in the form of an EA or an EIS. The table below is not intended to be a complete or exhaustive list of agencies and public organizations.

Table 0-3. Example Environmental Factors and Relevant Agencies and Public Organizations

Context / Proposed Activity	Agency	Community
Social conditions	Census, DHHS, UH School of Social Work, Judiciary.	Neighbors, community leaders, and property owners.
Air and water	Pollution control agencies in county and State governments (e.g., county public works department, Department of Health); for actions (such as dredging) that may impact waters of the U.S., contact the U.S.	Neighbors, community leaders, and property owners.

Context / Proposed Activity	Agency	Community
	Army Corps of Engineers.	
Flora and fauna	Agencies/organizations responsible for flora and fauna resources (e.g., the DLNR, the U.S. Fish and Wildlife Service).	Neighbors, community leaders, and property owners.
Ambient noise	State and County noise abatement programs (e.g., Noise and Radiation Branch, Environmental Health Services Division, Department of Health).	Neighbors, community leaders, and property owners.
Cultural conditions	OHA and DHHL	Kahea, Hawaiian community organizations, and nearby homestead communities Community members familiar with the cultural resources and practices in the geographical region the proposed action is situated in it.
Historic or aesthetic significance	County historic places review board, and State Historic Preservation Division of the DLNR.	Neighbors, community leaders, and property owners.
Conservation zoned sites or district	Department of Land and Natural Resources (DLNR); and possibly the Na Ala Hele (Trails) program of DLNR.	The Nature Conservancy, The Outdoor Circle, the Sierra Club, and Hawaii's 1000 Friends.
Coastal areas	County planning departments for a Special Management Area Permit and a Shoreline Setback.	Sierra Club and Sea Grant Program of the University of Hawaii.
Historic areas	State Historic Preservation Division.	Historic Hawaii Foundation.

To facilitate the process iterations in the early consultation period, the reader is encouraged to review the following guidance documents related to:

1. Biological surveys, ecosystem impact analysis and mitigation measures;
2. Guidelines for Assessing Cultural Impacts and the List of Cultural Impact Assessment Providers;
3. Guidelines for Assessing Water Well Development Projects;
4. Shoreline Hardening Policy;
5. Guidelines for Sustainable Building Design in Hawaii, all available online at http://www.hawaii.gov/health/environmental/oeqc/index.html

GUIDELINES FOR ASSESSING CULTURAL IMPACTS

(Adopted by the Environmental Council, State of Hawaii, November 19, 1997)

I. INTRODUCTION

It is the policy of the State of Hawaii under Chapter 343, HRS, to alert decision makers through the environmental assessment process about significant environmental effects which may result from the implementation of certain actions. An environmental assessment of cultural impacts gathers information about cultural practices and cultural features that may be affected by actions subject to Chapter 343, and promotes responsible decision-making.

Articles IX and XII of the State Constitution, other state laws and the courts of the state require government agencies to promote and preserve cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Chapter 343 also requires environmental assessment of cultural resources, in determining the significance of a proposed project.

The Environmental Council encourages preparers of environmental assessments and environmental impact statements to analyze the impact of a proposed action on cultural practices and features associated with the project area. The Council provides the following methodology and content protocol as guidance for any assessment of a project that may significantly affect cultural resources.

II. CULTURAL IMPACT ASSESSMENT METHODOLOGY

Cultural impacts differ from other types of impacts assessed in environmental assessments or environmental impact statements. A cultural impact assessment includes information relating to the practices and beliefs of a particular cultural or ethnic group or groups.

Such information may be obtained through scoping community meetings, ethnographic interviews and oral histories. Information provided by knowledgeable informants, including traditional cultural practitioners, can be applied to the analysis of cultural impacts in conjunction with information concerning cultural practices and features obtained through consultation and from documentary research.

In scoping the cultural portion of an environmental assessment, the geographical extent of the inquiry should, in most instances, be greater than the area over which the proposed action will take place. This is to ensure that cultural practices which may not occur within the boundaries of the project area, but which may nonetheless be affected, are included in the assessment. Thus, for example, a proposed action that may not physically alter gathering practices, but may affect access to gathering areas would be included in the assessment. An ahupua'a is usually the appropriate geographical unit to begin an assessment of cultural impacts of a proposed action, particularly if it includes all of the types of cultural practices associated with the project area. In some cases, cultural practices are likely to extend beyond the ahupua'a and the geographical extent of the study area should take into account those cultural practices.

The historical period studied in a cultural impact assessment should commence with the initial presence in the area of the particular group whose cultural practices and features are being assessed. The types of cultural practices and beliefs subject to assessment may include subsistence, commercial, residential, agricultural, access-related, recreational, and religious and spiritual customs.

The types of cultural resources subject to assessment may include traditional cultural properties or other types of historic sites, both man made and natural, including submerged cultural resources, which support such cultural practices and beliefs.

If the subject area is in a developed urban setting, cultural impacts must still be assessed. Many incorrectly assume that the presence of urban infrastructure effectively precludes consideration of current cultural factors. For example, persons are known to gather kauna`oa, `ilima, `uhaloa, noni or ki on the grassy slopes and ramps of the H-1 freeway and some state highways on the neighbor islands. Certain landmarks and physical features are used by Hawaiian navigators for sailing, and the lines of sight from landmarks to the coast by fisherman to locate certain fishing spots. Blocking these features by the construction of buildings or tanks may constitute an adverse cultural impact.

The Environmental Council recommends that preparers of assessments analyzing cultural impacts adopt the following protocol:

A. Identify and consult with individuals and organizations with expertise concerning the types of cultural resources, practices and beliefs found within the broad geographical area, e.g. district or ahupua'a;
B. Identify and consult with individuals and organizations with knowledge of the area potentially affected by the proposed action;
C. Receive information from or conduct ethnographic interviews and oral histories with persons having knowledge of the potentially affected area;
D. Conduct ethnographic, historical, anthropological, sociological, and other culturally related documentary research;
E. Identify and describe the cultural resources, practices, and beliefs located within the potentially affected area; and
F. Assess the impact of the proposed action, alternatives to the proposed action, and mitigation measures, on the cultural resources, practices and beliefs identified.

Interviews and oral histories with knowledgeable individuals may be recorded, if consent is given, and field visits by preparers accompanied by informants are encouraged. Persons interviewed should be afforded an opportunity to review the record of the interview, and consent to publish the record should be obtained whenever possible. For example, the precise location of human burials is likely to be withheld from a cultural impact assessment, but it is important that the document identify the impact a project would have on the burials. At times an informant may provide information only on the condition that it remains in confidence. The wishes of the informant should be respected.

Primary source materials reviewed and analyzed may include, as appropriate: Mahele, land court, census and tax records including testimonies; vital statistics records; family histories and genealogies; previously published or recorded ethnographic interviews and oral histories; community studies, old maps and photographs; and other archival documents, including correspondence, newspaper or almanac articles, and visitor journals. Secondary source materials such as historical, sociological and anthropological texts manuscripts, and similar materials published and unpublished, should also be consulted. Other materials, which should be examined, include prior land use proposals, decisions, and rulings, which pertain to the study area.

III. CULTURAL IMPACT ASSESSMENT CONTENTS

In addition to the content requirements for environmental assessments and environmental impact statements, which are set out in HAR §11-200-10 and 16 through 18, the portion of the assessment concerning cultural impacts should address, but not necessarily be limited to, the following matters:

A. A discussion of the methods applied and results of consultation with individuals and organizations identified by the preparer as being familiar with cultural practices and features associated with the project area, including any constraints or limitations which might have affected the quality of the information obtained.
B. A description of methods adopted by the preparer to identify, locate, and select the persons interviewed, including a discussion of the level of effort undertaken.
C. Ethnographic and oral history interview procedures, including the circumstances under which the interviews were conducted, and any constraints or limitations which might have affected the quality of the information obtained.
D. Biographical information concerning the individuals and organizations consulted, their particular expertise, and their historical and genealogical relationship to the project area, as well as information concerning the persons submitting information or interviewed, their particular knowledge and cultural expertise, if any, and their historical and genealogical relationship to the project area.
E. A discussion concerning historical and cultural source materials consulted, the institutions and repositories searched and the level of effort undertaken. This discussion should include, if appropriate, the particular perspective of the authors, any opposing views, and any other relevant constraints, limitations or biases.
F. A discussion concerning the cultural resources, practices and beliefs identified, and, for resources and practices, their location within the broad geographical area in which the proposed action is located, as well as their direct or indirect significance or connection to the project site.
G. A discussion concerning the nature of the cultural practices and beliefs, and the significance of the cultural resources within the project area affected directly or indirectly by the proposed project.
H. An explanation of confidential information that has been withheld from public disclosure in the assessment.
I. A discussion concerning any conflicting information in regard to identified cultural resources, practices and beliefs.
J. An analysis of the potential effect of any proposed physical alteration on cultural resources, practices or beliefs; the potential of the proposed action to isolate cultural resources, practices or beliefs from their setting; and the potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place.
K. A bibliography of references, and attached records of interviews which were allowed to be disclosed.

The inclusion of this information will help make environmental assessments and environmental impact statements complete and meet the requirements of Chapter 343, HRS. If you have any questions, please call 586-4185. You may ask OEQC if a directory of cultural impacts assessment providers is available.

Chapter 2: Environmental Assessment

For actions that trigger Chapter 343 review but are not declared exempt pursuant to Section 11-200-8, HAR, an EA is required. There are four instances where such an EA must be prepared:

DEA-AFONSI:	A proposing agency or an approving agency anticipates a finding of no significant impact (AFONSI) for a proposed action and prepares a DEA in accordance with Section 11-200-9, HAR, and Section 11-200-10, HAR;
FEA-FONSI:	A proposing agency or an approving agency has reviewed public comments (if any) on a DEA and prepares a FEA supporting a FONSI;
FEA-EISPN:	A proposing agency or an approving agency determines at the outset that a proposed action will have a significant impact on the environment requiring the preparation of a FEA supporting an environmental impact statement preparation notice (EISPN) determination; or,
FEA-EISPN:	A proposing agency or an approving agency has reviewed public comments on a DEA where the agency originally anticipated a finding of no significant impact (AFONSI). The public comments indicate that the proposed action may now have significant effects requiring the preparation of a FEA supporting an EISPN determination.

The proposing agency or approving agency shall prepare any DEA or FEA of each proposed action and determine whether the anticipated effects constitute a significant effect in the context of Chapter 343, HRS, and Section 11-200-12. Section 11-200-9, HAR, permits an approving agency to direct the preparation of an EA by the applicant. See the appropriate checklist in Chapter 6 (for agency actions) or Chapter 7 (for applicant actions). The EA must contain, but is not limited to, the information described in the following subsections. Please note that the EA should be made understandable to the general public using plain language, illustrations, and photographs.

The following sections describe the required minimum content for an EA, as prescribed in HAR 11-200-10.

2.1 Agency Action or Applicant Action?

For agency actions, identify the proposing agency. If the proposing agency determines that an EIS will be required then identify the "accepting authority," which will be either the governor, or the county mayor, or their authorized representatives.

For applicant actions, identify the applicant, and the approving agency. HAR §11-200-10(1). For applicant proposals the approving agency oversees both the preparation of an EA as well as the determination of acceptability on a FEIS.

Accepting authority→Agency actions
Approving agency→Applicant actions

In both instances, it is not required to list the agency making the determination on the need for an environmental impact statement since HEPA confers this responsibility on the proposing agency or the approving agency.

2.2 Identify the Approving Agency

The applicant needs to indicate who the approving agency is. HAR §11-200-10(2).

Approving agency = An agency that issues an approval prior to actual implementation of an action

2.3 Identify Agencies, Citizen Groups and Individuals in the Early Consultation Process

HAR §11-200-10(3). Append all written correspondence to the EA.

2.4 Describe the Proposed Action with Respect to its Technical, Economic, Social and Environmental Characteristics

HAR §11-200-10(4). Provide necessary technical details on the characteristics of the proposed action sufficient to provide a clear understanding of the proposed action. Include tax map key numbers of affected properties (or geographic coordinates if TMK numbers are not available), the names of property owners and lessees, state land use classification, county general plan designation and zoning, any special designations such as shoreline setback, special management area, or historic site or landmark. For proposed facilities, provide floor/lot plans and a rendering of any final appearance with the most detail possible. As a part of discussing the social aspects, describe in sufficient detail the cultural aspects of the proposed action. Provide the implementation schedule and permitting scheme for the action. For actions triggered by the use of state or county lands, disclose the amount of funds involved.

2.5 Provide a Summary Description of the Affected Environment

HAR §11-200-10(5). Concisely describe the affected environment, keeping in mind the HEPA meaning of "environment." Include suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps.

Describe the natural physical environment such as soil types, topographic features, ground water regime, surface water bodies, proximity to the coastline, flora and fauna, rare and threatened species, endangered species, critical habitats, plant exclosures, wetlands, marshes, streams, estuaries.

Describe the social and cultural environment, including political divisions, population, communities, cultural resources, cultural practices, economic geography, fishponds, recreation areas, surfing sites. Describe the historic-archaeological environment, including fishponds, historic sites, archaeological sites, and historic districts.

Describe sensitive areas such as flood plains, tsunami zones, beaches, streams, rivers, ocean, estuaries, anchialine ponds, submarine fresh water seeps, fresh or coastal waters, erosion-prone areas and geologically hazardous land.

2.6 Identify and Summarize Direct, Indirect and Cumulative Impacts, and Any Alternatives Considered

HAR §11-200-10(6):

A. Determine relationships within the context of the environmental setting to identify direct, indirect and cumulative impacts of the proposed action on the surrounding environment and community.
B. In the environmental setting, discuss the direct, indirect and cumulative impacts of the proposed action on the surrounding environment and community.
C. Identify and summarize beneficial as well as adverse direct, indirect and cumulative impacts.

D. Ensure that there is a direct correlation between impacts and the element affected in the environmental setting.
E. Discuss alternative methods and modes for implementing the proposed action, selecting the one with the least detrimental effect on the environment. Some alternatives to consider include: different sites; different facility configurations; or, different implementation methods.
F. Alternative analysis should include input from the community as a part of the early consultation process.

2.7 Formulate Measures to Mitigate Adverse Direct, Indirect, and Cumulative Impacts of the Proposed Action

HAR §11-200-10(7). Where direct, indirect or cumulative impacts of the proposed action on rare, threatened, or endangered species, or where direct, indirect or cumulative impacts of the proposed action on sensitive areas identified in any environmental setting, formulate measures to mitigate, reduce or rectify any adverse impacts.

2.8 Determination Based on the Analysis of Significance in Section 11-200-12, HAR

HAR §11-200-10(8). The proposing agency or the approving agency is responsible for:
A. Making a determination on the need for an EIS Agency determination, or
B. An anticipated determination for DEAs:
Where the agency prepares the EA, the determination can be included in the EA. For applicant actions where the agency directs the preparation of an EA, the determination section in the EA can include a reference by the applicant to the fact that the approving agency will issue its determination under Section 11-200-11.1, HAR, or Section 11-200.11.2, HAR in a notice of determination letter to the OEQC. The approving agency sends a letter to the OEQC, compliant with the provisions of the rules governing notice of determinations on DEAs and FEAs.

2.9 Findings and Reasons Supporting the Agency Determination or Anticipated Determination.

HAR §11-200-10(9). For agency actions, the proposing agency includes these findings and reasons, based on its analysis of significance in Section 11-200-12, HAR. For applicant actions where the agency directs the preparation of an EA, the findings and reasons section in the EA can include a reference by the applicant to the fact that the approving agency will issue its determination under Section 11-200-11.1, HAR, or Section 11-200-11.2, HAR in a notice of determination letter to the OEQC that will include the findings and reasons supporting its determination. The proposing agency or the approving agency should use written facts in the EA in light of the significance criteria to support its findings.

2.10 Agencies to be Consulted in the Preparation of the Environmental Impact Statement, if an Environmental Impact Statement is to be Prepared

HAR §11-200-10(10). This should have been determined during the early consultation process, or after the 30-day comment period on a DEA or FEA with an EISPN determination. Refer to the Flowcharts in Chapters 6 and 7.

2.11 List all Permits and Approvals

HAR §11-200-10(11). List all known or anticipated discretionary permits and approvals, as well as ministerial permits and approvals, for the proposed action. This list should include all state, county, and federal approvals.

2.12 Written Comments and Responses Under Early Consultation or Written Comments Under Public Comment Periods

HAR §11-200-10(12). Early consultation under Section 11-200-9, HAR, does not require written consultation. However, where such written consultation has taken place, include written comments and responses to the comments under the early consultation provisions. Where there was a public comment period include copies of all comments on the DEA. Comments on the FEA for an EISPN determination under Section 11-200-15, HAR, need to be included in the subsequent DEIS.

Chapter 3: Notices of Determination on Draft and Final Environmental Assessments

There are three notices of determination associated with an EA prepared under HEPA. They can be viewed as the conclusion of an analysis - that is, the disclosure of required premises needed to conduct the required level of analysis and answer the question as to whether the proposed action will or will not have a significant impact on the environment. These notices are as follows:

- **AFONSI**, always associated with a draft environmental assessment (See Section 11-200-11.1, HAR)
- **FONSI**, always associated with a final environmental assessment (See Section 11-200-11.2, HAR)
- **EISPN**, always associated with a final environmental assessment (See Section 11-200-11.2, HAR).

AFONSI = Anticipated Finding of No Significant Impact
FONSI = Finding of No Significant Impact
EISPN = Environmental Impact Statement Preparation Notice

For the purposes of HEPA, the notices of determination are usually submitted to OEQC on agency letterhead. They are required to contain the following elements (HAR 11-200-11.1(c)):

	Include items in:
A. Identification of applicant or proposing agency	OEQC Publication Form
B. Identification of accepting authority or approving agency	OEQC Publication Form
C. A brief description of proposed action	OEQC Publication Form
D. Determination	Body of the letter
E. Reasons supporting determination	- Agency actions: EA - Applicant actions: EA or body of the letter
F. Name, address, and phone number of contact person for further information	Body of the letter

Make reference in the body of the letter to the OEQC Publication Form and to the associated EA, which should contain the reasons supporting the agency determination.

Chapters 3 (for agency actions) or Chapter 4 (for applicant actions) contain template letters for the various types of notices of determination.

The issuance of a notice of determination has various effects depending on type:

- For AFONSI, the publication of the notice of availability of DEA-AFONSI in The Environmental Notice initiates a 30-day statutorily-mandated comment period.
- For FONSI, the publication of the notice of availability of the FEA-FONSI in The Environmental Notice initiates a 30-day judicial challenge period under Section 343-7(b), HRS.
- For EISPN, the publication of the notice of availability of the FEA-EISPN in The Environmental Notice initiates a 30-day comment period under the auspices of Section 11-200-15, HAR, for the public to review the FEA-EISPN, request to become a consulted party, and to submit comments on the FEA-EISPN. Publication of the FEA-EISPN in The Environmental Notice also

affords an applicant a 60-day judicial challenge period to contest the approving agency's determination of EISPN, since the preparation of an EIS is resource and time intensive.

3.1 Document Submission Policy

Section 343-3, HRS, requires that the OEQC publish a periodic bulletin: *The Environmental Notice*.

3.1.1 Policy on the Number and Types of Copies of Documents Copies (2008)

The Hawai'i Administrative Rules (Sections 11-200-3, 11-200-9(a)(5), 11-200-9(b)(4), 11-200-20) currently specifies the number of copies of an EA or an EIS that need to be filed with the OEQC. The rules also require that such documents be accompanied by a completed bulletin publication form eight working days prior to the issue date.

Since 2008, the proposing agency (for agency actions) or the approving agency (for applicant actions) are required to submit to the office two paper copies of an environmental document along with an Adobe Acrobat Portable Document Format (PDF) file of the document as well as the necessary additional documentation (described in detail in Chapters 6 and 7).

The requirement for paper copies remains because the OEQC remains the clearinghouse of HEPA documents. The courts have frequently requested that the OEQC certify that copies of certain documents required to be kept on file as authentic copies of the official file copy in the OEQC. These certifications require notarization, which in turn entails a physical examination of the official file copy in the OEQC by the notary public.

3.1.2 2010 Policy on Timeliness of Document Submission - Failure to Comply Deemed a Procedural Defect

Under Section 11-200-3, HAR, The Environmental Notice is published on the 8th and the 23rd of each month. By administrative rule, agencies must submit items for publication eight working days before the 8th or the 23rd of every month. Each year, the OEQC compiles a calendar compliant with Section 11-200-3, HAR, of submission deadlines and comment deadlines that set forth the 30 and 45-day comment period end dates. The calendar is generally available by December of the preceding calendar year.

Publication of items that are subject to Chapter 343, HRS, in The Environmental Notice has legal effect. For example, timely submittal of a DEA with a determination of AFONSI initiates a process whereby the OEQC must determine that statutory and administrative items are met. Also, timely submission of a DEIS will lead to publication in The Environmental Notice which in turn will initiate the mandatory 45-day public comment period set forth in Section 343-5, HRS.

Requests for submittals of "corrections" to timely-received submittals patently contravene deadlines set forth by administrative rule; approving the "corrections" would undermine the environmental review process set forth in Chapter 343, HRS. These requests also lead one to question the integrity of documents submitted pursuant to Chapter

All submittals **MUST** comply with the deadlines set forth in Section 11-200-3, HAR.

343, HRS - which may be deemed procedural defects for the purposes of Section 11-200-23, HAR.

Requests for any "corrections" for timely-received submittals will not be considered by the OEQC. Any revisions must be submitted as additional documents, withdrawals, or correction notices (as appropriate). Except for DEIS and FEIS, all submittals must be from either an approving agency, a proposing agency, or the accepting authority.

Chapter 4: Environmental Impact Statements

By virtue of the statutory language in HEPA, HRS §343-5(b) and (c), any and all EIS's must begin with an EA. The circumstances under which EISs begin vary as seen in two examples below.

Example #1:
A proposing agency may decide at the outset that its proposed action is of such magnitude that it will likely have significant effects on the environment. That proposing agency would then engage in the early consultation process set forth in Section 11-200-9, HAR, prepare an EA (termed "final" in the rules - even though it is the first document for public review under Section 11-200-15, HAR - to distinguish it from the "draft" which has a specific statutory meaning with respect to AFONSI).

Example #2:
An applicant submits a permit application for a shoreline setback variance to the county planning department. The department thoroughly reviews the application, and informs the applicant that under HEPA and county ordinance the proposed action under the permit application will likely have significant effect requiring the preparation of full environmental impact statement. The county also informs the applicant that prior to preparing the draft EIS, the applicant needs engage in early consultation with affected agencies, individuals and organizations having jurisdiction or expertise concerning its proposed action, and to prepare an environmental assessment compliant with the requirements set forth by rule to the county planning department. After successive reviews of the iterations of the document being prepared by applicant, the county planning department adopts the applicant's document as its own final EA and simultaneously issues a notice of determination on the applicant's EA. The approving agency then sends a copy of the notice of determination on the FEA to both the OEQC and the applicant. The OEQC published notice of availability of the FEA-EISPN in its periodic bulletin. With sixty days from the date of public notice of availability of the FEA-EISPN in the periodic bulletin, the applicant and his attorney may challenge the county planning department's determination of EISPN under Section 343-7(b), HRS. Absent any such challenge, the applicant also proceeds with the 30-day consultation process under Section 11-200-15, HAR prior to preparing a draft EIS

In each of the above examples, the proposing agency or applicant correctly engaged in early consultation prior to preparing an EA. The early consultation process is integral to HEPA. **The FEA generated as a result of the early consultation process provided valuable input and data for proposing agency or the applicant to use in the composition of the DEIS.** The consultation period set forth by Section 11-200-15, HAR, will further afford agencies, organization and individuals another opportunity to request to become a consulted party in the preparation of the EIS for the proposed action.

The EIS is a disclosure document that discloses the environmental setting of the proposed action, analyzes the effects of a proposed project or program on the environment in terms of direct, indirect and cumulative impacts, discusses alternative methods, modes or designs of the proposed action, and formulates mitigation to eliminate, reduce, rectify adverse impacts of the proposed action. The DEIS must include copies of comments received and response sent for the FEA and EISPN during the 30-day comment period authorized by Section 11-200-15, HAR.

Section 343-5, HRS, mandates a 45- day comment period for a DEIS. The EIS is a more complex screening tool than either the exemption declaration or the EA to examine proposed actions for probable impacts on the environment. Accordingly, the process around an EIS is augmented with additional tools (beyond those used in the EA) to ensure that the document is distributed for and reviewed by agencies, organizations and individuals, in a timely manner (see Section 11-200-21, HAR, concerning distribution of the draft and final

EIS), and to further ensure that comments are responded to by the proposing agency or applicant in a point-by-point manner (see Section 11-200-22, HAR, concerning public review of an EIS). Section 11-200-17, HAR, prescribes the required contents of a DEIS, while Section 11-200-18, HAR, prescribes the contents of a FEIS.

HEPA directs that in cases involving agency actions and applicant actions where an EIS is required, the preparing party (the proposing agency for agency actions, or the applicant for applicant actions) must prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. As such, an EIS involves more than document preparation - it involves the entire process of early consultation, research, dialogue, document preparation and review. The EIS must be written in plain language to allow public understanding of its content. The rules that govern the EIS process require that the statement contain at least the following elements:

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

HAR §11-200-17. The administrative rules set forth in Sub-Chapter 7, Preparation of Draft and Final EIS, are detailed and prescriptive, but self-explanatory. Consequently, this section will highlight those aspects of the EIS process that require special procedural attention.

4.1 Draft EIS and Final EIS Document Distribution and Advance of a Bulletin Proof

There is no process articulated in the HEPA statute or rules for the distribution of EAs. Mandatory document distribution is limited to the EIS process only. By policy (see Section 1.11.1) the OEQC began to accept electronic documents in PDF format in 2007 provided that two hard copies accompany the electronic submittal.

The OEQC recommends that prior to distributing documents for an EIS in paper format, the proposing agency or the applicant contact the parties identified in the distribution matrix at the earliest practicable time to determine the number of printed copies to produce.

DEIS and FEIS submissions to the OEQC and to the accepting authority or approving agency should be accompanied by a distribution list indicating what entities would be receiving copies of the EIS on or before the start of the 45-day comment period. The OEQC then verifies the accuracy of the distribution list under Section 11-200-21, HAR, usually within several days after the submittal deadline. Verification by OEQC allows the proposing agency or applicant to distribute the document to those on the list (which includes consulted parties under Section 11-200-15, HAR). The OEQC recommends that lists be examined in advance, with the understanding that additional requests for documents may be received after the 45-day comment period. The proposing agency or applicant should inform the OEQC of any additions as soon as possible. Exhibit 4-1 presents the EIS distribution matrices applicable to both agency and applicant actions.

4.1.1 OEQC Verifies the Accuracy of the Distribution List.

When transmitting documents to persons on the OEQC-verified distribution lists for draft and final EIS's, the OEQC will transmit in advance of publication, *the portion of The Environmental Notice to the applicant or proposing agency detailing the particulars of the public comment process*. The distribution verification will also include this information for the applicant or proposing agency to include with its distribution of the particular document.

4.1.2 Determination of Acceptability

Agency actions	The accepting authority: Governor or county mayor	- Determines the acceptability of the FEIS (Section 11-200-23, HAR). - County governments have their own internal procedures for processing agency actions.	OEQC: - Makes a recommendation on the acceptability of a FEIS prior to transmittal to the Governor after reviewing the FEIS, especially with respect to point-by-point responses to comments, and procedural compliance with the deadlines. - Abstracts the mitigation measures in the FEIS and appends these to its acceptance/non-acceptance report to the Governor.
Applicant actions	The approving agency:	- Determines the acceptability of the FEIS (Section 11-200-23, HAR). - If the approving agency does not make a determination within 30 days from its receipt of the FEIS, an applicant action FEIS is automatically accepted (Section 343-5(c), HRS).	

Both agency and applicant actions acceptance/non-acceptance determination must be submitted to the OEQC for publication in The Environmental Notice. The publication of an acceptance notice opens up a judicial challenge period under Section 343-7(c), HRS.

For applicant actions, non-acceptance of an applicant's FEIS by the approving agency is grounds for administrative appeal to the Environmental Council within 60-days of the non-acceptance. HAR §11-200-24. The applicant may choose not to appeal to the Council, and simply prepare and submit a revised DEIS addressing the deficiencies that led to non-acceptance.

4.1.3 Supplemental Environmental Impact Statements

The HEPA statute makes no explicit mention of a "supplemental EIS." HEPA says that acceptance of an EIS satisfies the requirements of this chapter and no further EIS shall be required for that action, HRS 343-5(g). The Hawaii Supreme Court has held, however, that a supplemental EIS is required where there have been substantive changes in environmental effects. *Unite Here! Local 5 v. City and County of Honolulu and Kuilima Resort*. The criteria when a supplemental EIS needs to be prepared, namely, when there are changes in size, scope, location, intensity, use or timing, are set forth in Section 11-200-26, HAR. Under Section 343-5, HRS, once a final EIS is accepted, it is not required to be tracked by the accepting authority or approving agency, even if the action has not been implemented.

When an agency/entity looks at its previously accepted but not fully-implemented EIS, it generally needs to evaluate whether the document is still valid with respect to size, scope, location, intensity, use or timing. If it finds that the document is no longer valid, it requires the preparation of an EIS starting with the FEA-EISPN. If it finds that the document is still valid, it informs the OEQC (see Exhibits 4-2, and 4-3)

A supplemental EIS may need to be prepared when there are substantive changes in size, scope, location, intensity, use or timing.

4.1.4 National Environmental Policy Act

Often, a proposing agency (for agency actions) or an approving agency (for applicant actions) will need to comply with the provisions of the National Environmental Policy Act (NEPA), in addition to Chapter 343, HRS. Section 343-5(f), HRS states that "[w]henever an action is subject to both the National Environmental Policy Act of 1969 … and the requirements of [Chapter 343, HRS], the [Office of Environmental Quality Control] and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with [Chapter 343, HRS], the [OEQC] and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws."

In order to understand the policy set forth by Section 343-5(f), HRS, it is important to understand both NEPA and Chapter 343, HRS, articulating the similarities and differences between both.

Going from the State EIS process to the NEPA process can be confusing, since the terminology is similar (i.e., EA, EIS, direct impacts, indirect impacts, cumulative impacts, etc.). It is important to note, in comparing the two processes, that the Federal process examines a proposal and results in one of three different determinations, namely a CE, an EIS, or an EA (which in turn can result in a FONSI or NOI). To the extent that the proposal also triggers Hawaii's process, the proposal would require a State or county agency to examine the proposal and issue an exemption declaration or an EA (with an AFONSI, or EISPN determination). The EA is the key document to the State process, unlike the NEPA process.

Section 343-5(a), HRS, clearly requires an EA, "except as otherwise provided" for proposed actions that includes nine different categories. The "except as otherwise provided" clause covers both the statutory exclusions described earlier, as well as exemption declarations. One key difference between NEPA and HEPA is that NEPA is under the oversight of one federal agency from disclosure/planning to design to implementation. HEPA has no oversight over design and implementation. Such oversight under HEPA belongs to the agencies that permit or implement the proposed action.

In addition to having no EA to begin the EIS process, the NEPA process also provides for a 30-day comment period on a FEIS prior to a record of decision (ROD). The State process begins with an EA that provides for a 30-day comment period. Outside of the common 45-day DEIS comment period, the State process does not have a comment period on a FEIS.

For more information on NEPA, please visit http://www.nepa.gov.

Exhibit 4-1

Matrices for the Distribution of EIS Documents

GOVERNMENT OF THE STATE OF HAWAI'I(S)

Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
State of Hawai'i Department of Agriculture	1428 S. King Str. Honolulu, HI 96814	hdoainfo@hawaii.gov	(808) 973-9550	Y	
State of Hawai'i Department of Accounting and General Services	P.O. Box 119 Honolulu, HI 96810	dags@hawaii.gov	(808) 586-0400	Y	
State of Hawai'i Department of Accounting and General Services Archives Division	P.O. Box 119 Honolulu, HI 96810	archives@hawaii.gov	(808) 586-0310		
State of Hawai'i Department of Business, Economic Development and Tourism	P.O. Box 2359 Honolulu, HI 96804	http://hawaii.gov/dbedt/main/about/about-dbedt	(808) 586-2355	Y	
State of Hawai'i Department of Business, Economic Development and Tourism, Research Division Library	No. 1, Capitol District Bldg. 250 S. Hotel Street, Ste. 435 Honolulu, HI 96813	http://hawaii.gov/dbedt/info/economic	(808) 586-2481	Y	
State of Hawai'i Department of Business, Economic Development and Tourism, Strategic Industries Division	235 S. Beretania St., 5th Flr. Honolulu, HI 96813	http://hawaii.gov/dbedt/info/energy	(808) 587-3812	Y	
State of Hawai'i Department of Business, Economic Development and Tourism, Office of Planning	235 S. Beretania St., 6th Floor Honolulu, HI 96813	http://hawaii.gov/dbedt/op/	(808) 587-2846	Y	
State of Hawai'i Department of Defense	3949 Diamond Head Road Honolulu, HI 96816	http://hawaii.gov/dod	(808) 733-4258	Y	
State of Hawai'i Department of Education	P.O. Box 2360 Honolulu, HI 96804	http://doe.k12.hi.us/	(808) 586-3310		
State of Hawai'i, Department of Education, Hawaii State Library, Hawai'i Documents Center	478 S. King Street Honolulu, HI 96813	http://www.librarieshawaii.org/locations/index.htm	(808) 586-3555	Y	Y
State of Hawai'i, Department of Education, Hawai'i State Library, Kaimuki Regional Library	1041 Koko Head Avenue Honolulu, HI 96813	http://www.librarieshawaii.org/locations/index.htm	(808) 733-8422	Y	Y

State of Hawai‘i Department of Education Hawai‘i State Library, Kane‘ohe Regional Library	45-829 Kamehameha Highway Kane‘ohe, HI 96744	http://www.librarieshawaii.org/locations/index.htm	(808) 233-5676	Y	Y
State of Hawai‘i Department of Education Hawai‘i State Library, Pearl City Regional Library	1138 Waimano Home Road Pearl City, HI 96782	http://www.librarieshawaii.org/locations/index.htm	(808) 453-6566	Y	Y
State of Hawai‘i, Department of Education, Hawai‘i State Library, Hawai‘i Kai Regional Library	249 Lunalilo Home Road Honolulu, HI 96825	http://www.librarieshawaii.org/locations/index.htm	(808) 397-5833	Y	Y
State of Hawai‘i Department of Education Hawai‘i State Library, Hilo Regional Library	300 Waianuenue Avenue Hilo, HI 96720	http://www.librarieshawaii.org/locations/index.htm	(808) 933-8888	Y	Y
State of Hawai‘i, Department of Education, Hawai‘i State Library, Kahului Regional Library	90 School Street Kahului, HI 96732	http://www.librarieshawaii.org/locations/index.htm	(808) 873-3097	Y	Y
State of Hawai‘i Department of Education Hawai‘i State Library, Lihu‘e Regional Library	4344 Hardy Street Lihu‘e, HI 96766	http://www.librarieshawaii.org/locations/index.htm	(808) 241-3222	Y	Y
State of Hawai‘i Department of Hawaiian Home Lands	P.O. Box 1879 Honolulu, HI 96805	http://hawaii.gov/dhhl/contact-info	(808) 620-9501	Y	Y
State of Hawai‘i, Department of Health, Environmental Health Administration	P.O. Box 3378 Honolulu, HI 96801	http://hawaii.gov/health	(808) 586-4424	Y	Y
State of Hawai‘i, Department of Land and Natural Resources	P.O. Box 621, Honolulu, HI 96809	http://hawaii.gov/dlnr	(808) 587-0400	Y	
State of Hawai‘i Department of Land and Natural Resources State Historic Preservation Division	601 Kamokila Blvd., Rm. 555 Kapolei, HI 96707	http://hawaii.gov/dlnr/hpd/	(808) 692-8015	Y	
State of Hawai‘i Department of Transportation	869 Punchbowl Street Honolulu, HI 96813	http://hawaii.gov/dot	(808) 587-2160	Y	
University of Hawai‘i Office of Capital Improvement	1960 East-West Road, Biomed B-102, Honolulu, HI 96822	http://www.hawaii.edu/oci	(808) 956-7935		

University of Hawai‘i Water Resources Research Center	2540 Dole Street, Room 283 Honolulu, HI 96822	http://www.wrrc.hawaii.edu/	(808) 956-7847	Y	
University of Hawai‘i Environmental Center	2500 Dole Street Krauss Annex 19 Honolulu, HI 96822	http://www.hawaii.edu/envctr/evs/index.html	(808) 956-7362	Y	Y
University of Hawai‘i Marine Program	2450 Campus Road Dean Hall 105A Honolulu, HI 96822	http://www.hawaii.edu/mop/site/	(808) 956-8433		
University of Hawai‘i Thomas H. Hamilton Library	2550 McCarthy Mall Honolulu, HI 96822	http://library.manoa.hawaii.edu/departments/hp/	(808) 956-8264	Y	Y
University of Hawai‘i at Hilo Edwin H. Mo‘okini Library	200 W. Kawili Street Hilo, HI 96720	http://library.uhh.hawaii.edu/index.html	(808) 974-7346	Y	Y
University of Hawai‘i Maui College Library	310 Ka‘ahumanu Avenue Kahului, HI 96732	http://www.maui.hawaii.edu/library/	(808) 984-3233	Y	Y
University of Hawai‘i Kaua‘i Community College Library	3-1901 Kaumualii Highway Lihu‘e, HI 96766	http://info.kauaicc.hawaii.edu/library/	(808) 245-8233	Y	Y
Office of Hawaiian Affairs	711 Kapi‘olani Blvd., Suite 500 Honolulu, HI 96813	info@oha.org	(808) 594-1835	Y	
Legislative Reference Bureau Library	State Capitol 415 S. Beretania St., Rm. 005 Honolulu, HI 96813	http://hawaii.gov/lrb/	(808) 587-0690	Y	Y

GOVERNMENT OF THE COUNTY OF HAWAIʻI (H)

Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
County of Hawaiʻi Department of Environmental Management	Puʻainako Town Center 2100 Kanoelehua Avenue, Bay C-5, Hilo, HI 96720	http://www.co.hawaii.hi.us/directory/dir_envmng.htm	(808) 961-8083	Y	
County of Hawaiʻi Fire Department	25 Aupuni Street Hilo, HI 96720	fire@co.hi.us	(808) 932-2900		
County of Hawaiʻi Department of Parks and Recreation	101 Pauahi Street, Suite 6 Hilo, HI 96720	parks_recreation@co.hi.us	(808) 961-8311	Y	
County of Hawaiʻi Planning Department	101 Pauahi Street, Suite 3 Hilo, HI 96720	planning@co.hi.us	(808) 961-8288	Y	Y
County of Hawaiʻi Police Department	349 Kapiʻolani Street Hilo, HI 96720	http://www.hawaiipolice.com/index.html	(808) 961-2243		
County of Hawaiʻi Department of Public Works	101 Pauahi Street, Suite 7 Hilo, HI 96720	public_works@co.hawaii.hi.us	(808) 961-8321	Y	
County of Hawaiʻi Department of Research and Development	25 Aupuni Street Hilo, HI 96720	http://hawaiicountyrandd.net/	(808) 961-8366		
County of Hawaiʻi Department of Water Supply	345 Kekuanaoʻa Street, Suite 20, Hilo, HI 96720	dws@hawaiidws.org	(808) 961-8050	Y	

GOVERNMENT OF THE COUNTY OF KAUAʻI (K)

Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
County of Kauaʻi Fire Department	3083 Akahi St., Suite 101 Lihuʻe, HI 96766	kfd@kauai.gov	(808) 241-4980		
County of Kauaʻi Department of Planning	4444 Rice St., Suite 473 Lihuʻe, HI 96766	http://www.kauai.gov/planning	(808) 241-6677	Y	Y
County of Kauaʻi Police Department	3990 Kaʻana St., Suite 200 Lihuʻe, HI 96766	http://www.kauai.gov/police	(808) 241-1600		
County of Kauaʻi Department of Public Works	4444 Rice Street, Suite 275 Lihuʻe, HI 96766	publicworks@kauai.gov	(808) 241-4992	Y	
County of Kauaʻi Transportation Agency	3220 Hoʻolako St., Suite 103 Lihuʻe, HI 96766	thekauaibus@kauai.gov	(808) 241-6410		

County of Kaua'i, Department of Water	P.O. Box 1706 Lihu'e, HI 6766	www.kauaiwater.org	(808) 245-5400	Y	

GOVERNMENT OF THE COUNTY OF MAUI (M)

Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
County of Maui Department of Fire and Public Safety	200 Dairy Road Kahului, HI 96733	fire.dept@co.hi.maui.us	(808) 270-7561		
County of Maui Department of Environmental Management	2200 Main Street One Main Plaza Bldg. Ste.100 Wailuku, HI 96793-2155	http://www.co.maui.hi.us/index.aspx?nid=1736	(808) 270-8230		
County of Maui Department of Housing and Human Concerns	2200 Main Street One Main Plaza Bldg., Ste.546 Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=117	(808) 270-7805		
County of Maui Department of Parks and Recreation	700 Hali'a Nakoa Street War Memorial Complex Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=119	(808) 270-7230		
County of Maui Department of Planning	250 S. High Street Kalana Pakui Bldg., Ste. 200 Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=121	(808) 270-7735	Y	Y
County of Maui Police Department	55 Mahalani Street Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=122	(808) 244-6400		
County of Maui Department of Public Works	200 S. High Street Kalana O Maui Bldg., 4th Flr., Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=124	(808) 270-7845	Y	
County of Maui, Department of Transportation	2145 Ka'ohu Street, David Trask Building, Suite 102, Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=125	(808) 270-7511		
County of Maui Department of Water Supply	200 S. High Street, Kalana O Maui Building, 5th Floor, Wailuku, HI 96793	http://www.co.maui.hi.us/index.aspx?nid=126	(808) 270-7816		

GOVERNMENT OF THE CITY AND COUNTY OF HONOLULU (O)

Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
City and County of Honolulu Board of Water Supply	630 S. Beretania Street Honolulu, HI 96813	http://www.hbws.org/cssweb/display.cfm?sid=1181	(808) 748-5000	Y	
City and County of Honolulu Department of Customer Services Municipal Library	558 S. King Street City Hall Annex Honolulu, HI 96813-3006	http://www1.honolulu.gov/csd/lrmb/references.htm	(808) 768-3757	Y	
City and County of Honolulu Department of Design and Construction	650 S. King St., 11th Floor Honolulu, HI 96813	http://www1.honolulu.gov/ddc/aboutus.htm	(808) 768-8480	Y	
City and County of Honolulu Department of Environmental Services	1000 ʻUluʻohiʻa St., Ste. 308 Kapolei, HI 96707	http://envhonolulu.org/	(808) 768-3486	Y	
City and County of Honolulu Department of Facility Maintenance	1000 ʻUluʻohiʻa St., Ste. 215 Kapolei, HI 96707	http://www1.honolulu.gov/dfm/	(808) 768-3343	Y	
City and County of Honolulu Fire Department	636 South Street Honolulu, HI 96813-5007	http://www1.honolulu.gov/hfd/	(808) 723-7101		
City and County of Honolulu Department of Community Services	715 S. King St., Rm. 311 Honolulu, HI 96813	http://www1.honolulu.gov/dcs/	(808) 768-7760		
City and County of Honolulu Department of Planning and Permitting	650 S. King Str., 7th Floor Honolulu, HI 96813	http://www.honoluludpp.org/	(808) 768-8000	Y	Y
City and County of Honolulu Department of Parks and Recreation	1000 ʻUluʻohiʻa St., Ste. 309 Kapolei, HI 96707	http://www1.honolulu.gov/parks/	(808) 768-3001	Y	
City and County of Honolulu Police Department	801 S. Beretania Street Honolulu, HI 96813	http://www.honolulupd.org/	(808) 529-3162		
City and County of Honolulu Department of Transportation Services	650 S. King St., 3rd Floor Honolulu, HI 96813	http://www1.honolulu.gov/dts/	(808) 768-8303	Y	

GOVERNMENT OF THE UNITED STATES OF AMERICA (USA)

Federal Agency	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
Department of the Interior, Geological Survey, Pacific Islands Water Science Center	677 Ala Moana Boulevard, Ste. 415, Honolulu, HI 96813	http://hi.water.usgs.gov/	(808) 587-2400	Y	
Department of the Interior Fish and Wildlife Service	300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850-0056	http://www.fws.gov/pacificislands/	(808) 792-9400	Y	
Department of Commerce National Marine Fisheries Service	Pacific Islands Regional Office, 1611 Kapiʻolani Boulevard, Suite 1110, Honolulu, HI 96814	http://www.fpir.noaa.gov/	(808) 944-2200	Y	
Department of the Interior National Parks Service	Pacific Islands Support Office, 300 Ala Moana Boulevard. Room 6-226, Honolulu, HI 96850	http://www.nps.gov/pwro/piso/	(808) 541-2693	Y	
Department of Agriculture National Resources Conservation Service	Pacific Islands Area Office, P.O. Box 50004, Honolulu, HI 96850	http://www.pia.nrcs.usda.gov/	(808) 541-2600	Y	
Department of the Army Army Corps of Engineers	Pacific Ocean Division, Building 525, Suite 300, Fort Shafter, HI 96858-5440	http://www.poh.usace.army.mil/	(808) 438-1500		
Department of the Navy	Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860-3130		(808) 472-1000		
Department of Transportation Federal Aviation Administration	300 Ala Moana Boulevard, Room 7-128 Honolulu, HI 96850-7128	http://www.faa.gov/airports/western_pacific/about_airports/honolulu/	(808) 541-1232	Y	
Department of Transportation Federal Transit Administration	201 Mission St., Ste. 1650 San Francisco, CA 94105-1839	http://www.fta.dot.gov/regional_offices_909.html	(415) 744-3133	Y	
Department of Transportation Federal Highways Administration	Hawaii Division, Box 50206, 300 Ala Moana Boulevard, Room 3306, Honolulu, HI 96850	http://www.fhwa.dot.gov/hidiv/index.htm	(808) 541-2700		

Department of Homeland Security Coast Guard	Commander, 14th Coast Guard District, 300 Ala Moana Boulevard, Room 9-204, Honolulu, HI 96850-4982		(808) 535-3201	Y	
Environmental Protection Agency	Region IX, Pacific Islands Contact Office, P.O. Box 50003, Honolulu, HI 96850	http://www.epa.gov/region9/islands/pico.html	(808) 541-2710		

LIBRARIES AND DEPOSITORIES (LD)

Library or Depository	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
Nearest public library		http://www.librarieshawaii.org/locations/index.htm		Y	Y

NEWS MEDIA (NM)

Organization	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
Honolulu Star Advertiser	Restaurant Row 7, Waterfront Plaza, Suite 210, 500 Ala Moana Boulevard, Honolulu, HI 96813	citydesk@staradvertiser.com	(808) 529-4747	Y	Y
Hawai`i Tribune Herald	P.O. Box 767, Hilo, HI 96721	http://www.hawaiitribune-herald.com/share/submit_news/	(808) 930-7324	Y	Y
West Hawai`i Today	P.O. Box 789, Kailua-Kona, HI 96745-0789	http://www.westhawaiitoday.com/content/submit-content.html	(808) 329-9311	Y	Y
The Garden Island	P.O. Box 231, Lihu‘e, HI 96766	neagle@thegardenisland.com	(808) 245-3681	Y	Y
Maui News	100 Mahalani Street, Wailuku, HI 96793	citydesk@mauinews.com	(808) 244-3981	Y	Y
Moloka`i Dispatch	P.O. Box 482219, Kaunakakai, HI 96748	editor@themolokaidispatch.com	(808) 552-2781	Y	Y
Honolulu Civil Beat		http://www.civilbeat.com/			

ELECTED AND OTHER OFFICIALS (EO)

Official	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
U.S. Senator				Y	Y
U.S. Representative				Y	Y
State Senator				Y	Y
State Representative				Y	Y
County Council Representative				Y	Y
Neighborhood Board Representative				Y	Y

CONSULTED PARTIES AND COMMENTERS UNDER SECTION 11-200-15, HAR (CP)

Name	Mailing Address	Electronic Mail or Internet Address	Telephone	DEIS	FEIS
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y
				Y	Y

‡ - distribute the document to required entities in the county where the proposed action is taking place.

* - required distribution to regional libraries statewide for all actions.

EXHIBIT 4-2

SAMPLE LETTER FOR AN ACCEPTING AUTHORITY DETERMINATION UNDER SECTION 11-200-27(d), HAR, THAT A SUPPLEMENTAL STATEMENT IS NOT REQUIRED (FOR AGENCY ACTIONS)

Accepting Authority Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

The Final Environmental Impact Statement for the _____ was accepted by our agency on _____. The action has not yet been fully implemented and we have initiated a review of the FEIS with respect to changes in size, scope, location, intensity, use and timing. We found that our review indicated that no Supplemental Environmental Impact Statement will be required at this time.

Please publish appropriate notice of this in next available the Environmental Notice).

If there are any questions, please contact (Accepting Authority Contact Name) at (Contact Telephone Number).

Sincerely,

(Accepting Authority Official)

Enclosures

C: Proposing Agency

EXHIBIT 4-3

SAMPLE LETTER FOR AN APPROVING AGENCY DETERMINATION UNDER SECTION 11-200-27(d), HAR, THAT A SUPPLEMENTAL STATEMENT IS NOT REQUIRED (FOR APPLICANT ACTIONS)

Approving Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

The Final Environmental Impact Statement (FEIS) for the _____ was accepted by our agency on _____ (or was deemed accepted as a matter of law under Section 343-5(c), Hawaii Revised Statutes). The action has not yet been fully implemented and we have initiated a review of the FEIS with respect to changes in size, scope, location, intensity, use and timing. We found that our review indicated that no Supplemental Environmental Impact Statement will be required at this time.

Please publish appropriate notice of this in the next available the Environmental Notice.

If there are any questions, please contact (Approving Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Approving Agency Official)

Enclosures

C: Applicant

Chapter 5: Exemption Declarations

An agency may declare an action exempt from the environmental assessment requirements if it finds, after consulting with relevant agencies/experts, that the action will not have significant environmental effects.[1] The agency that can make such an exemption declaration is the State or County proposing agency (for agency actions), or an approving agency (for applicant actions). The relevant agencies/experts, from which the agency must obtain advice before declaring an action exempt, are "other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption." By rule, there are 11 classes of actions that agencies may use to find, after consultation, that an action is exempt. (See below, Section 11-200-8(a), HAR).

In addition, each agency is required by rule to develop, based on its experience, a list of specific types of actions that fall within the 11 classes. The lists must be consistent with both the letter and intent expressed in the 11 classes and Chapter 343. Each agency must submit such a list, and periodic amendments, to the Environmental Council for review and concurrence. Section 11-200-8(d), HAR. An agency's exemption list, after concurrence by the Environmental Council, may be a useful tool guiding the agency in deciding whether to declare routine types of actions to be exempt from EA requirements.

By rule, each agency must maintain records of actions that it has found to be exempt from EA requirements and shall produce those records for review upon request. Section 11-200-8(e), HAR.

Additionally, Section 11-200-8(b), HAR, states that:

> *"All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment."*

The eleven exempt classes of action under HEPA rules are:

- Operations, repairs, or maintenance of existing structure, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
- 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.
- Construction and location of single, new, small facilities or structures and the alteration and modification of the same, including, but not limited to:
  A. Single-family residences less than 3,500 square feet not in conjunction with the building of two or more units;

[1] The statute defines "significant effect" as "the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State." HRS §343-2. The rule provides additional direction for agencies in the "significance criteria." Section 11-200-12, HAR and Section 1.7, *supra*.

B. Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
C. Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
D. Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

- Minor alterations in the conditions of land, water, or vegetation;
- Basic data collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource;
- Construction or placement of minor structures accessory to existing facilities;
- Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
- 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 National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or Chapter 6E, HRS;
- Zoning variances except shoreline setback variances;
- Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions; and
- Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond that previously existing, and for which the legislature has appropriated or otherwise authorized funding.

An exemption declaration template for both agency and applicant actions can be found in Exhibit 5-1. The proposing agency and the approving agency sign the declaration and keep it on file and when requested makes it available to a requestor. In all cases, each proposed exempted action must be reviewed and analyzed for potential environmental impacts. The exemption, if granted, must be documented and, said documentation made available to the public upon request.

5.1 How to Prepare an Agency Exemption List for Review and Concurrence by the Environmental Council

A. Reviewing past exemption declarations for routine actions are one source of actions for a proposed list. Proposed lists should first be commented on by appropriate permitting agencies. When this has been done, the agency should submit the proposed list to the Council.
B. If the agency is submitting a revised list for Council review and concurrence, or a brand new list, a paper copy as well as an electronic copy of the list should be provided to the Council. The agency should also clearly indicate the changes in Ramseyer from the exemption list previously concurred in by the Council.
C. The Council will review the list and request that the OEQC publish notice in The Environmental Notice of availability for public comment on the list for a period of 30-days. The Environmental Notice will indicate that comments must be sent by postal mail, messenger or electronic mail (environmental.council@doh.hawaii.gov) on or before the 30-day deadline. Comments must be addressed to the Chairperson of the Council, with a copy to the OEQC.
D. After the 30-day public comment period, the agency will be provided a set of comments received on the proposed list and the agency will respond to the public comments and provide copies of the same to the Council. The Council will then schedule a meeting to discuss the proposed list and the agency's response to public comments. This will be an iterative process,

depending on the issues raised and their mutually satisfactory resolution between the agency and the Council. During these meetings, subject to Chapter 92, HRS, requirements (Sunshine Law), an agency representative should be present to discuss the lists with the Council's Standing Committee on Exemption Lists.

E. When any outstanding issues have been resolved with respect to the language of the list to be concurred in by the Council, the Standing Committee on Exemption Lists will notify the Chairperson of the Council, who in turn will set a date certain for the Council to formally act on the concurrence of the proposed list. The concurrence of the Council will occur during a public meeting subject to Sunshine Law, and eight affirmative votes of the members will be required to concur in the proposed list. If concurred, the agency files the list as concurred in by the Council with OEQC. The OEQC in turn will notify the public of the new agency list by publication of notice in the periodic bulletin. If not concurred, the agency may withdraw its request, or continue successive iterations of the process.

5.2 How to Add More Classes of Exempt Action to the Administrative Rules

Section 11-200-8(c), HAR, states that "[a]ny agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the [Council], in writing, and contain detailed information to support the request as set forth in [Section] 11-201-16, [HAR], Environmental Council Rules."

5.3 Gubernatorial Emergency Declarations and HEPA

Section 11-200-8(f), HAR states that "[i]n the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter."

5.4 Judicial Review of HEPA Exemption Declarations

Section 343-7(a), HRS, authorizes aggrieved parties to complain in court about agency or applicant actions for which no EA was prepared within one-hundred-twenty days of the agency's decision to carry out or approve the action, or if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one-hundred-twenty days after the proposed action is started.

5.5 Sample Exemption Declaration

Refer to Exhibit 5-1.

EXHIBIT 5-1

SAMPLE EXEMPTION DECLARATION FORM FOR AGENCY AND APPLICANT ACTIONS

[Agency Name]
[Street Address]
[City, State, Zip Code]

TO: 1. Agency-Maintained Public Files for Chapter 343 HRS Exemption Determinations, Hawai‘i Revised Statutes
2. Office of Environmental Quality Control
3. [Applicant, if applicable]

FROM: Director of [Agency Name]

SUBJECT: Exemption Declaration

DATE: [Date of Declaration]

BASES OF EXEMPTION

Check applicable box

☐ This Exemption Declaration for the action described below above is based on the Exemption List for the [name of agency], reviewed and concurred in by the Environmental Council on [date of concurrence], Exemption Class and Number ____.

☐ This Exemption Declaration for the action described below is based on Exemption Class ____, Section 11-200-8(a), Hawai‘i Administrative Rules (HAR).

AGENCY OR APPLICANT ACTION

Check applicable box

☐ The exempted action is an agency action as defined by Section 11-200-5, HAR

☐ The exempted action is an applicant action as defined by Section 11-200-6, HAR

DESCRIPTION OF ACTION

Name of Agency or Applicant _____

Brief Description of the Action _____

_____

_____

Beginning Date Anticipated Start of Action

_____

Anticipated Ending Date Completion of Action

_____

Island and District and Island of Action Location

_____

Tax Map Key of Action _____

CONSULTATION

List the name, title, affiliation, and date of consultation for any parties consulted about the exemption of this action:

_____

_____

_____

_____

CONCERNS/POTENTIAL IMPACTS

Check all applicable boxes

- ☐ None
- ☐ Land Use Impact and Zoning Conformance
- ☐ Traffic (Vehicles, Bicycles, Pedestrian)
- ☐ Compliance
- ☐ Waste (Solid, Hazardous, Liquid)
- ☐ Increased Demand on Infrastructure
- ☐ Social and Economic Impacts
- ☐ Health and Safety
- ☐ Property Acquisition Requirement
- ☐ Natural Resources, including
- ☐ Rare, Threatened, and Endangered Species
- ☐ Surface and Ground Water Resources,
- ☐ Wetlands or
- ☐ Floodplains
- ☐ Cultural Resources and Practices
- ☐ Access to Public Access Resources (such as beach access)
- ☐ Health and Safety
- ☐ Air Quality Pollutant Emissions
- ☐ Noise Emissions
- ☐ Infrastructure
- ☐ Traffic (Vehicles, Bicycles, Pedestrian)
- ☐ Waste (Solid, Hazardous, Liquid)
- ☐ Social Economic
- ☐ Visual/Aesthetic Impact
- ☐ Environmental Justice (disproportionate adverse impact in disadvantaged areas)
- ☐ Degree of Controversy
- ☐ Other

Briefly describe concerns and potential adverse environmental, social, and cultural impacts relating to the action, and/or exemption, and remediation (mitigation) measures, and basis for exempting the action from further environmental review.

_____

_____

_____

_____

_____

SENSITIVE ENVIRONMENTS

Describe any sensitive environments related to the exempted action

_____

_____

_____

_____

CUMULATIVE IMPACTS

Briefly describe any cumulative impacts by the action described above. "Cumulative impact" is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Section 11-200-2.

_____

_____

_____

_____

_____

_____

APPROVAL OF EXEMPTION

I have considered the direct, cumulative, and potential impacts of the action described above pursuant to provided by Chapter 343, Hawai'i Revised Statutes and Chapter 11-200, Hawai'i Administrative Rules. I declare that the action described above will have minimal or no significant impact on the environment and is therefore exempt from the preparation of an environmental assessment.

This document is on file in our office and is available for public review.

_____ _____

[Signature of Director or Delegate] [Date]

Chapter 6: Agency Actions Under HEPA

HEPA includes the following statutes and administrative rules:

- HRS Chapter 343, Environmental Impact Statements
- HAR 11-200, Environmental Impact Statement Rules
- HAR 11-201, Environmental Council Rules of Practice and Procedure

6.1 Goals of this Chapter

This chapter will provide you with the specific requirements for agency actions (*not declared exempt*) under HEPA. You will learn to use the proper terminology associated with agency actions, as well as the specific steps of the process for actions.

6.2 Proper Terminology for Agency Actions

The agency initiating an action, also initiates the EA process, and is termed the "**proposing agency**." The proposing agency also makes an initial determination on the need for an EA (exemption declaration) and the need for an EIS (FONSI or EISPN).

The proposing agency engages in the early consultation process prior to preparation of an EA. The proposing agency submits the EA (including copies of written early consultation comments and responses) and its appropriate notice of determination to the OEQC.

In the event that the proposing agency determines from the EA that a full EIS is required (EISPN), the entity that determines the acceptability of the subsequent FEIS is termed the "**accepting authority**." This is either the Governor or the County Mayor.

6.3 Process Flow Charts, Forms, Sample Letters, and Checklists for Agency Actions

Please refer to Exhibits 6.1 to 6-11.

For a step-by-step guide through the EIS process agency actions, see Flowcharts on pages 49-50

THIS GUIDEBOOK IS FOR GENERAL INFORMATION ONLY. CONSULT THE STATUTE AND THE RULES FOR SPECIFIC APPLICABILITY, JUDICIAL CHALLENGE AND DETAILED STEPS TO IMPLEMENTATION AND PROCESS OF HEPA.

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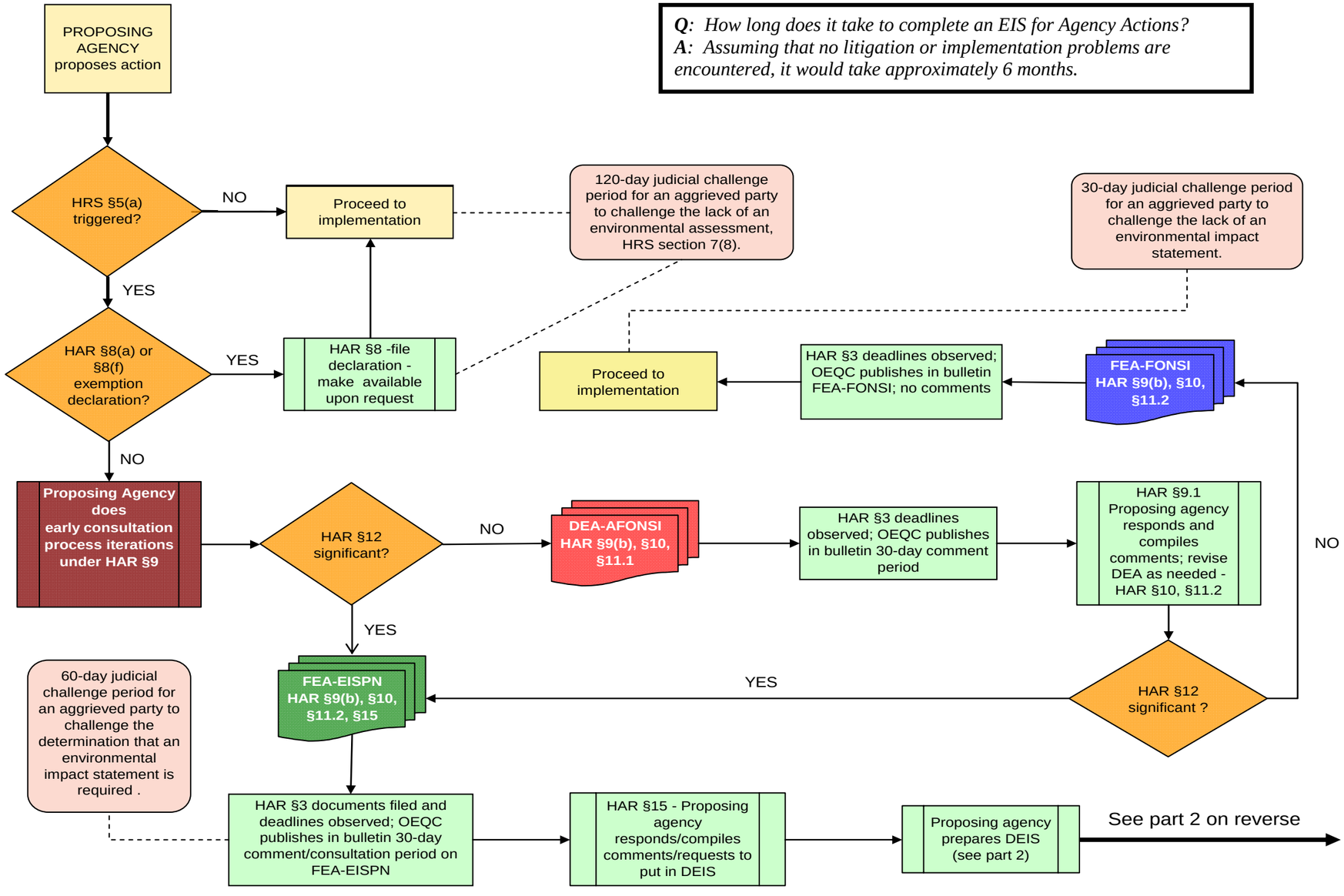
HEPA FLOWCHART, AGENCY ACTIONS, PART 1

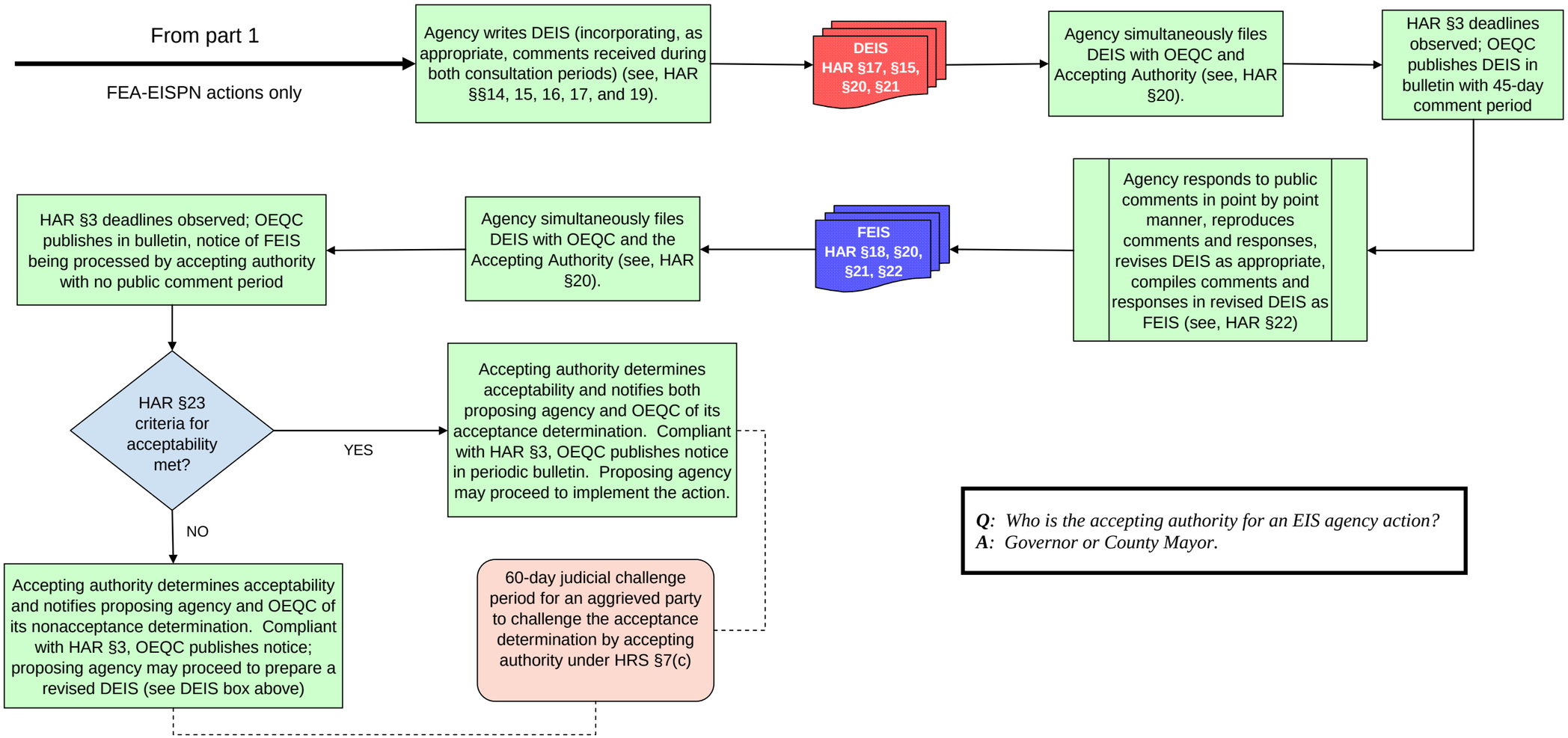
Important: This flowchart is a guide to the milestone events in the process and is not a substitute for reading and complying with the HEPA statute and administrative rules. HAR in this flowchart refers to Chapter 11-200, and section numbers are provided for brevity. HRS in this flowchart refers to Chapter 343, and section numbers are provided for brevity.
This guidebook is for general guidelines only. Consult the statute and the rules for specific applicability, judicial challenge, and detailed steps to implementation and process of HEPA.



***Q**: How long does it take to complete an EIS for Agency Actions?*
***A**: Assuming that no litigation or implementation problems are encountered, it would take approximately 6 months.*

HEPA FLOWCHART, AGENCY ACTIONS, PART 2

Important: This flowchart is a guide to the milestone events in the process and is not a substitute for reading and complying with the HEPA statute and administrative rules. HAR in this flowchart refers to Chapter 11-200, and section numbers are provided for brevity. HRS in this flowchart refers to Chapter 343, and section numbers are provided for brevity.
This guidebook is for general guidelines only. Consult the statute and the rules for specific applicability, judicial challenge, and detailed steps to implementation and process of HEPA.



Q: *Who is the accepting authority for an EIS agency action?*
A: *Governor or County Mayor.*

EXHIBIT 6-3

SAMPLE LETTER FOR PROPOSING AGENCY FILING A DRAFT ENVIRONMENTAL ASSESSMENT AND ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Proposing Agency Name) hereby transmits the draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

Enclosed is a completed OEQC Publication Form, two copies of the DEA-AFONSI, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Proposing Agency Official)

Enclosures

EXHIBIT 6-4

SAMPLE LETTER FOR PROPOSING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Proposing Agency Name) hereby transmits the final environmental assessment and finding of no significant impact (FEA-FONSI) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

The (Proposing Agency Name) has included copies of comments and responses that it received during the 30-day public comment period on the draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI).

Enclosed is a completed OEQC Publication Form, two copies of the FEA-FONSI, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Proposing Agency Official)

Enclosures

EXHIBIT 6-5

SAMPLE LETTER FOR PROPOSING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE WITH THE OEQC (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Proposing Agency Name) hereby transmits the final environmental assessment and environmental impact statement preparation notice (FEA-EISPN) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

We understand that publication of the FEA-EISPN in the Environmental Notice will initiate a 30-day public consultation period for parties to comment on the action and to request to become consulted parties in the preparation of the draft environmental impact statement.

Enclosed is a completed OEQC Publication Form, two copies of the FEA-EISPN, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

We are copying the (Accepting Authority) to inform them that a subsequent draft EIS will be prepared at the conclusion of the public consultation period.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Proposing Agency Official)

Enclosures

C: Accepting Authority

EXHIBIT 6-6

SAMPLE LETTER FOR PROPOSING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE FOLLOWING A DRAFT ENVIRONMENTAL ASSESSMENT AND ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

Prior to this letter, the (Proposing Agency Name) had transmitted to you a draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI), notice of which was published in the _____, 201_, edition of the Environmental Notice. At the conclusion of the 30-day public comment period, the (Proposing Agency Name) reviewed the information and comments in light of the significant criteria set forth in Section 11-200-12, Hawaii Administrative Rules. We now find that the proposed action may have a significant effect on the environment.

With this letter, the (Proposing Agency Name) hereby transmits the final environmental assessment and environmental impact statement preparation notice (FEA-EISPN) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

We understand that publication of the FEA-EISPN in the Environmental Notice will initiate a 30-day public consultation period for parties to comment on the action and to request to become consulted parties in the preparation of the draft environmental impact statement.

Enclosed is a completed OEQC Publication Form, two copies of the FEA-EISPN, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

We are copying the (Accepting Authority) to inform them that a subsequent draft EIS will be prepared at the conclusion of the public consultation period.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Proposing Agency Official)

Enclosures

C: Accepting Authority

EXHIBIT 6-7

SAMPLE LETTER FOR PROPOSING AGENCY FILING A DRAFT ENVIRONMENTAL IMPACT STATEMENT SIMULTANEOUSLY WITH THE OEQC AND THE ACCEPTING AUTHORITY (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

The Honorable (Mayor/Governor)
County of ___ or State of Hawai‘i
Street Address
City, Hawai‘i 96___

Dear Director and Honorable (Mayor/Governor):

With this letter, the (Proposing Agency Name) hereby transmits the documents package for the draft environmental impact statement for the (Action Name) situated at (TMK Number) in the (District Name) on the island of (Island Name) for publication of a notice of availability for public comment for 45-days in the next available edition of the Environmental Notice. The draft EIS has included copies of all written comments received during the early consultation period and during the 30-day public consultation period for the FEA-EISPN.

Also enclosed is a distribution list for the verification of OEQC under Section 11-200-20, Hawai‘i Administrative Rules. Upon receiving verification from OEQC (along with the bulletin proof of the notice containing the pertinent details for commenters), we will make the draft EIS and the bulletin proof available to those so indicated on the distribution list so that they will have the full 45-day statutory period to review and comment on the draft EIS.

Finally, enclosed is a completed OEQC Publication Form, two copies of the draft EIS, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to the OEQC.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Official of the Proposing Agency)

Enclosures

EXHIBIT 6-8

SAMPLE LETTER FOR PROPOSING AGENCY FILING A FINAL ENVIRONMENTAL IMPACT STATEMENT SIMULTANEOUSLY WITH THE OEQC AND THE ACCEPTING AUTHORITY (FOR AGENCY ACTIONS)

Proposing Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

The Honorable (Mayor/Governor)
County of ___ or State of Hawai‘i
Street Address
City, Hawai‘i 96___

Dear Director and Honorable (Mayor/Governor):

With this letter, the (Proposing Agency Name) hereby transmits the documents package for the final environmental impact statement for the (Action Name) situated at (TMK Number) in the (District Name) on the island of (Island Name) for publication of a notice of availability in the next available edition of the Environmental Notice and for evaluation for acceptability under Section 11-200-23, Hawai‘i Administrative Rules.

Also enclosed is a distribution list for the verification of OEQC under Section 11-200-20, Hawai‘i Administrative Rules. Upon receiving verification from OEQC (along with the bulletin proof of the notice containing the pertinent details for commenters), we will make the final EIS and the bulletin proof available to those so indicated on the distribution list.

Finally, enclosed is a completed OEQC Publication Form, two copies of the final EIS, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to the OEQC.

If there are any questions, please contact (Proposing Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Official of the Proposing Agency)

Enclosures

EXHIBIT 6-9

HRS 343-5(b) – AGENCY ACTION ENVIRONMENTAL ASSESSMENT CHECKLIST

Name of Action: _____

Island and Tax Map Key: _____

Proposing Agency: _____

FOR OEQC USE ONLY
Date Received:
Date Published:
Staff reviewer:
Comment Deadline:
Public Library:

PART A: Draft Environmental Assessment (accompanied by Anticipated Finding of No Significant Impact (AFONSI) determination by the proposing agency with 30-day public comment period)

Identification of Section 343-5(a), HRS, trigger(s):

Applicable sections *(check all that apply)*:

___ Use of state or county lands or funds
___ Use in the conservation district
___ Use within shoreline setback area
___ Use of historic site or district
___ Waste water facility, waste-to-energy facility, landfill, oil refinery, or power-generating facility
___ Use in the Waikiki district
___ Amendment to county general plan
___ Reclassification of conservation lands to urban
___ Construction or modification of helicopter facilities

Content Requirements (see HAR §11-200-10, items1 thru 13)

___ Notice of determination[2] letter from the proposing agency requesting publication of its notice of determination of an anticipated finding of no significant impact (AFONSI) based on the attached draft environmental assessment.
___ Identification of agencies, citizen groups, and individuals consulted in making the assessment
___ General description of the action's technical, economic, social, and environmental characteristics; time frame; funding source
___ Summary description of the affected environment, including cultural resources and practices, suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
___ Identification and summary of impacts (direct, indirect and cumulative) to the affected environment described above and proposed mitigation measures
___ Alternatives considered
___ Discussion of findings and reasons supporting the agency anticipated determination
___ List of all required permits and approvals (both discretionary and ministerial at the state, federal, or county levels), if any
___ Written comments and responses to comments under the early consultation provisions under HAR 11-200-9(a)(1), and 11-200-9(b)(1)

PART B: Final Environmental Assessment (accompanied by Finding of No Significant Impact (FONSI) determination by the proposing agency with no public comment period)

___ Notice of determination[3] letter from the proposing agency requesting publication of its notice of determination of a finding of no significant impact (FONSI) based on the attached final environmental assessment.
___ Written comments and responses to the comments under the statutorily prescribed public review periods for the draft environmental assessment

FOR OEQC USE ONLY
Date Received:
Date Published:

[2] AFONSI – by rule (Section 11-200-11.1, HAR), the notice of determination from the proposing agency shall indicate: (1) the identity of the proposing agency; (2) the identity of the accepting authority; (3) a brief description of the proposed action; (4) the determination by the proposing agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person at the proposing agency to contact for more information.

[3] FONSI – by rule (Section 11-200-11.2, HAR), the notice of determination from the proposing agency shall indicate: (1) the identity of the proposing agency; (2) the identity of the accepting authority if an EIS was required; (3) a brief description of the proposed action; (4) the determination by the proposing agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person at the proposing agency to contact for more information.

PART C: Final Environmental Assessment (accompanied by Environmental Impact Statement Preparation Notice (EISPN) determination by the proposing agency with 30-day public comment period)

FOR OEQC USE ONLY
Date Received:
Date Published:
Staff reviewer:
Comment Deadline:

Identification of Section 343-5(a), HRS, trigger(s) (omit if this is a FEA-EISPN following a DEA):

Applicable sections *(check all that apply)*:

___ Use of state or county lands or funds
___ Use in the conservation district
___ Use within shoreline setback area
___ Use of historic site or district
___ Waste water facility, waste-to-energy facility, landfill, oil refinery, or power-generating facility
___ Use in the Waikiki district
___ Amendment to county general plan
___ Reclassification of conservation lands to urban
___ Construction or modification of helicopter facilities

Content Requirements (see HAR §11-200-10, items1 thru 13)

___ Notice of determination[4] letter from the proposing agency requesting publication of its notice of determination of an environmental impact statement preparation notice (EISPN) based on the attached final environmental assessment
___ Identification of proposing agency
___ Identification of agencies, citizen groups, and individuals consulted in making the assessment
___ General description of the action's technical, economic, social, and environmental characteristics; time frame; funding source
___ Summary description of the affected environment, including cultural resources and practices, suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
___ Identification and summary of impacts (direct, indirect and cumulative) to the affected environment described above and proposed mitigation measures
___ Alternatives considered
___ Discussion of findings and reasons supporting the agency determination
___ List of all required permits and approvals (both discretionary and ministerial at the state, federal, and county levels), if any
___ Written comments and responses to the comments under the early consultation under HAR 11-200-9(a)(1), 11-200-9(b)(1), and 11-200-15

With the submittal of the draft environmental impact statement, an HRS 343-5(b) AGENCY ACTIONS EIS CHECKLIST will be generated and used until the completion of the EIS process (acceptance or non-acceptance).

[4] EISPN – by rule (Section 11-200-11.2, HAR), a notice of determination from the proposing agency shall indicate: (1) the identity of the proposing agency; (2) the identity of the accepting authority; (3) a brief description of the proposed action; (4) the determination by the proposing agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person to contact at the proposing agency for more information.

EXHIBIT 6-10

HRS 343-5(b), AGENCY ACTION ENVIRONMENTAL IMPACT STATEMENT CHECKLIST

Action (Project) Name: _____

Proposing Agency _____

Accepting Authority: _____

Island and Tax Map Key_____

FOR OEQC USE ONLY
Date DEIS Received:
Date of Publication:
Comment Deadline:

PART A: DRAFT ENVIRONMENTAL IMPACT STATEMENT (filed by the proposing agency and accompanied by a transmittal letter from the proposing agency and distribution list - with 45-day public comment period)

Content Requirements (see Section 11-200-17, HAR)

___ 1. Summary sheet (abstract) which concisely discusses the following:
- ___ Brief description of the action
- ___ Significant beneficial and adverse impacts (including cumulative and secondary impacts)
- ___ Proposed mitigation measures
- ___ Alternatives considered
- ___ Unresolved issues
- ___ Compatibility with land use plans and policies
- ___ Listing of permits and approvals

___ 2. Table of contents

___ 3. Statement of purpose and need for the proposed action

___ 4. Project description, which shall include the following:
- ___ A detailed map (U. S. Geological Survey topographic, Flood Insurance Rate Maps, or Floodway Boundary Maps) and a related regional map

Statement of objectives
- ___ General description of the action's technical, economic, social and environmental characteristics
- ___ Use of public funds or lands for the action (if any), or other trigger
- ___ Phasing and timing of action
- ___ Summary technical data, diagrams and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public
- ___ Historic (archaeological and cultural) perspective

___ 5. Discussion of alternatives that could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected
- ___ Rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions
- ___ Alternatives that enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks (if any)
- ___ No action alternative
- ___ Alternatives requiring actions of a significantly different nature that would provide similar benefits with different environmental impacts (if any)
- ___ Alternatives related to different designs or details of the proposed actions which would present different environmental impacts (if any)
- ___ Alternative of postponing the action pending further study (if any)
- ___ Alternative locations for the proposed project (if any)

___ Comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative
___ Detailed explanation(s) why alternatives were rejected

___ 6. Description of the environmental setting
____Description of the environment[1] in the vicinity of the action as its exists before commencement of the action from a local and regional perspective
___ Environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, archaeological, contemporary cultural, or aesthetic significance)
___ Reference to related projects, public and private, existent or planned in the region
___ Population and growth characteristics, population and growth assumptions used to justify the action
___ Identification of data sources used to identify, qualify, or evaluate any and all environmental consequences

___ 7. Relationship to land use plans, policies, and controls
___ 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
___ Where a conflict or inconsistency exists, explain reasons why the agency has decided to proceed notwithstanding the absence of full reconciliation
___ List and status of necessary approvals from governmental agencies, boards or commissions or other similar groups having jurisdiction

___ 8. Probable impact (using the environmental setting described above as the backdrop for analysis and discussion)
___ Impacts (direct, indirect, and cumulative) of the project on the environment
___ Impacts (direct, indirect, and cumulative) of the natural physical and human environment on the project
___ Consideration of all phases of the action and consideration of all environmental consequences
___ Discussion of direct and indirect effects
___ Discussion of cumulative environmental impacts in the reasonably foreseeable future of the proposed action in relation to other projects
___ Population and growth impacts of an action
___ Discussion and incorporation of necessary data (if the proposed action constitutes an direct or indirect source of pollution determined by a government agency)

___ 9. Relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long- term productivity
___ Discussion of the extent to which the proposed action involves trade-offs among short-term and long-term gains and losses
___ Discussion of the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment

NOTE: *Short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.*

___ 10. Separate and distinct section containing the description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.
___ Identification of unavoidable impacts
___ Identification of the extent to which the action makes use of non-renewable resources during the phases of the action

NOTE: *Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.*

___ 11. Address all probable adverse environmental effects which cannot be avoided:
___ Water or air pollution
___ Urban congestion

___ Threats to public health
___ Consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy
___ Rationale for proceeding with proposed action notwithstanding unavoidable effects
___ Discussion of other interests and considerations of governmental policies that are thought to offset the adverse environmental effects of the proposed action
___ Discussion of the extent to which stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects

___ 12. Mitigation measures proposed to avoid, minimize, rectify or reduce impact:
___ Provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters and interests therein (if any)
___ Discussion of measures to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable
___ Where a particular mitigation measure has been chosen from among several alternatives, the measures have been discussed and the reasons for the choice have been disclosed.
___ Timing of each step in the mitigation process
___ What performance bonds (if any) may be posted
___ Provisions proposed to assure that the mitigation measures will be taken

___ 13. Separate and distinct section summarizing unresolved issues
___ Discussion of how such issues will be resolved prior to commencement of the action or discussion of the overriding reasons for proceeding without resolving the problems

___ 14. Separate and distinct section containing a list that identifies all government agencies, other organizations and private individuals consulted in preparing the statement (consulted parties and commenters during the FEA-EISPN process)
___ Identity of all persons, firms, or agency preparing the statement by contract or by authorization

___ 15. Separate and distinct section containing reproduction of all substantive comments and responses made during the consultation process
___ List of persons or agencies who were consulted and had no comment

EIS Style (see Section 11-200-19, HAR)

___ 1. The draft EIS is written in a way that conveys the required information succinctly in a form easily understood by members of the public and public decision makers

___ 2. The scope of the draft EIS is commensurate with the scope of the proposed action and its impact

___ 3. Data and analyses in the draft EIS are commensurate with the importance of the impact

___ 4. Less important material is summarized, consolidated, or simply referenced

___ 5. The draft EIS indicates at appropriate points in the text any underlying studies, reports and other information obtained and considered in preparing the draft EIS including cost benefit analyses and reports required under other legal authorities

___ 6. The draft EIS focuses on important issues

___ 7. The draft EIS is an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference

Filing of an EIS (see Section 11-200-20, HAR, 2008 Distribution Policy)

___ 1. The proposing agency files the draft EIS with the accepting authority along with the minimum amount of copies required by the accepting authority.

___ 2. The proposing agency simultaneously files two printed copies of the draft EIS (or alternatively, one electronic copy and two hard copies) with the Office of Environmental Quality Control

___ 3. The proposing agency signs the draft EIS and indicates that the draft EIS and all ancillary documents were prepared under the proposing agency's direction or supervision and that the information submitted, to the best of the proposing agency's knowledge fully addresses document content requirements as set for in Section 11-200-17, HAR.

Distribution (see Section 11-200-21, HAR, and 2008 Distribution Policy)

___ 1. The proposing agency submits a distribution list with the draft EIS for verification by the Office of Environmental Quality Control

___ 2. The Office of Environmental Quality Control issues a written verification of the distribution list before the issue date of The Environmental Notice announcing the draft EIS.

___ 3. The Office of Environmental Quality Control receives the third printed copy (or the third copy for applicants submitting an electronic copy) by mail/courier, thus confirming the distribution of the document on _____

PART B: FINAL ENVIRONMENTAL IMPACT STATEMENT (accompanied by transmittal letter from the proposing agency and distribution list with no public comment period).

Content Requirements (see Section 11-200-18, HAR)

FOR OEQC USE ONLY
Date FEIS Received:
Date of Decision: ___ Acceptance ___ Non-acceptance
Date Decision Received:
Date Decision Published:

___ 1. The draft EIS was revised as the final EIS to incorporate substantive comments received during the 45-day public review period

___ 2. Reproductions of all timely-received letters received containing substantive comments and, as applicable, summaries of any scoping meetings

___ 3. A list of persons, organizations, and public agencies commenting on the draft EIS

___ 4. The point-by-point responses of the applicant to each substantive question, comment, or recommendation received in the review and consultation process

___ 5. The text of the final EIS is written in a format that allows the reader to easily distinguish changes made to the draft EIS

EIS Style (see Section 11-200-19, HAR)

___ 1. The final EIS is written in a way that conveys the required information succinctly in a form easily understood by members of the public and public decision makers

___ 2. The scope of the final EIS is commensurate with the scope of the proposed action and its impacts

___ 3. Data and analyses in the final EIS are commensurate with the importance of the impacts

___ 4. Less important material is summarized, consolidated, or simply referenced

___ 5. The final EIS indicates at appropriate points in the text any underlying studies, reports and other information obtained and considered in preparing the EIS including cost benefit analyses and reports required under other legal authorities

___ 6. The final EIS focuses on important issues

___ 7. The final EIS is an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference

Filing of an EIS (see Section 11-200-20, HAR, 2008 Distribution Policy)

___ 1. The proposing agency files the final EIS with the accepting authority along with the minimum amount of copies required by the accepting authority

___ 2. The proposing agency simultaneously files two printed copies of the final EIS (or alternatively, one electronic copy and two hard copies) with the Office of Environmental Quality Control

___ 3. The proposing agency signs the final EIS and indicates that the final EIS and all ancillary documents were prepared under the proposing agency's direction or supervision and that the information submitted, to the best of the proposing agency's knowledge, fully addresses document content requirements as set for in Sections 11-200-17, and 11-200-18, HAR

Distribution (see Section 11-200-21, HAR, and 2008 Distribution Policy)

___ 1. The proposing agency submitted a distribution list with the final EIS for verification by the Office of Environmental Quality Control

___ 2. The Office of Environmental Quality Control issues a written verification of the distribution list before the issue date of The Environmental Notice announcing the final EIS

___ 3. The Office receives the third printed copy (or the third copy for applicants submitting an electronic copy) of the final EIS by mail/courier, thus confirming the distribution of the document on _____

Public Review Requirements (see Section 11-200-22, HAR)

___ 1. The responses to timely received (postmark or time stamped) comments include:
- ___ Point-by-point discussion of the validity, significance, and relevance of comments
- ___ Discussion as to how each comment was evaluated and considered in planning the proposed action
- ___ Response letters reproduced in the final EIS indicate verbatim changes that have been made to the text of the draft EIS
- ___ Response letters describe the disposition of significant environmental issues raised
- ___ Issues raised when the applicant's position is at variance with the recommendations and objections raised in the comments are addressed in detail, giving reasons why specific comments were not accepted, and factors of overriding importance warranting an override of the suggestions

NOTE: *An addendum document to the draft environmental impact statement shall reference the original draft environmental impact statement it attaches to and comply with all applicable filing, public review, and comment requirements set forth in Sub-Chapter 7, Chapter 11-200, HAR*

Determination of Acceptability (see Section 11-200-23, HAR)

____1. Certification of satisfactory completion of the procedures for environmental assessment (Section 11-200-9, HAR), consultation (Section 11-200-15, HAR), public review (Section 11-200-22, HAR), preparation and submission of the statement (Sub-Chapter 7, HAR 11-200)

____ 2. Certification of satisfactory completion of the content requirements (for environmental assessment and environmental impact statement (Chapter HAR 11-200)

____ 3. Certification that comments received during the review process have received responses satisfactory to the accepting authority

[1] Section 11-200-2, HAR, defines "environment" as "humanity's surroundings, inclusive of all the physical, economic, cultural and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

EXHIBIT 6-11

SECTION 343-5(b), HRS, AGENCY ACTION
SECTION 11-200-3(d), HAR, FORM FOR PUBLICATION IN THE PERIODIC BULLETIN OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Please read the instructions on page 3 of this form.

A. DATE:

B. TITLE OF ACTION: _____

C. TYPE OF DOCUMENT:
   (1) DEA with AFONSI
   (2) FEA with FONSI
   (3) FEA with EISPN
   (4) DEIS simultaneously filed with accepting authority/OEQC
   (5) FEIS simultaneously filed with accepting authority/OEQC

D. NOTICE OF PROPOSING AGENCY (OR ACCEPTING AUTHORITY) DETERMINATION ATTACHED (if any):
   (1) AFONSI
   (2) FONSI
   (3) EISPN
   (4) Acceptance/Non-acceptance of FEIS
   (5) Section 11-200-27, HAR, Notice that SEIS not required
   (6) Withdrawal

E. PROPOSING AGENCY: _____

   CONTACT FOR PROPOSING AGENCY: _____

   CONSULTANT FOR PROPOSING AGENCY (if any):_____

F. ACCEPTING AUTHORITY: _____

   CONTACT FOR ACCEPTING AUTHORITY: _____

G. ISLANDS AFFECTED BY THE ACTION: _____

H. TAX MAP KEY NUMBERS: _____

I. STREET ADDRESSES: _____

J. NEAREST GEOGRAPHICAL LANDMARKS: _____

K. LATITUDINAL/LONGITUDINAL COORDINATES: _____

L. STATUTORY/ADMINISTRATIVE AUTHORITIES: _____

M. BRIEF NARRATIVE SUMMARY OF PROPOSED ACTION:

N. FORM PREPARER:

0. CONTACT INFORMATION:

INSTRUCTIONS FOR COMPLETING THE INFORMATION FORM FOR PUBLICATION IN THE PERIODIC BULLETIN (FOR AGENCY ACTIONS, 2011 REVISION)

1. Ascertain if you have the right form. Are you an applicant or approving agency? If so, you are using the wrong form.
2. Enter the date in item A.
3. Enter the title of the proposed action in item B.
4. Circle the type of document being submitted in item C. All environmental assessments must be accompanied by a notice of determination from the proposing agency. Environmental impact statements must be filed simultaneously with the accepting authority and the Office of Environmental Quality Control.
5. Circle (if any) the type of notice of proposing agency (or accepting authority) determination attached in item D. For environmental assessments this should correspond to the documents listed in item C of the form. No agency determination letter is required for proposing agency filings of FEIS documents. Withdrawals must be on agency letterhead, and signed and dated.
6. In item E, list the name, mailing address, telephone, email (if any) of the proposing agency, including the name of the contact for the proposing agency. If there is a consultant for the proposing agency, list the name, address, telephone, email (if any) of the consultant, including the name of the contact for the consultant. Use more paper if necessary.
7. In item F, list the name, mailing address, telephone, email (if any) of the accepting authority, including the name of the contact for the accepting authority.
8. In item G, list the islands affected by the proposed action (e.g., Kauaʻi, Niʻihau, Oʻahu, Molokaʻi, Lanaʻi, Kahoʻolawe, Maui, Hawaiʻi, Northwestern Hawaiian Islands, etc.)
9. In item H, list the tax map key numbers affected by the proposed action.
10. In item I, list the street addresses and city of the location of the proposed action.
11. In item J, list the nearest geographical landmarks.
12. In item K, list the latitudinal/longitudinal coordinates.
13. In item L, list the statutory/administrative authorities:
    - Use of state/county lands/funds – Section 343-5(a)(1), HRS
    - Use of conservation district – Section 343-5(a)(2), HRS
    - Use within the shoreline setback area – Section 343-5(a)(3), HRS
    - Use within any historic site – Section 343-5(a)(4)
    - Use within the Waikiki Special District – Section 343-5(a)(5), HRS
    - Amendments to existing county general plans – Section 343-5(a)(6), HRS
    - Reclassification of conservation district lands – Section 343-5(a)(7), HRS
    - Helicopter facilities, construction/expansion/modification – Section 343-5(a)(8), HRS
    - Wastewater treatment units; waste to energy facility; landfill; oil refinery; or, power generating facility – Section 343-5(a)(9), HRS
    - Major federal action – National Environmental Policy Act
14. In item M, provide a summary in two-hundred-fifty words or less of the proposed action.
15. In items, N and O, list the name of the person who prepared this form along with their contact information (address, telephone number, email, facsimile, etc.)
16. <u>For DEA, FEA documents</u>: Submit this form, along with four hard copies of the supporting environmental assessment (or two hard copies and an Adobe Acrobat PDF file of the supporting environmental assessment), along with the notice of determination on the environmental assessment.
    <u>For DEIS, FEIS documents</u>: Submit this form, along with four hard copies of the supporting environmental impact statement (or two hard copies and an Adobe Acrobat PDF file of the supporting environmental impact statement).
    <u>For other documents (withdrawals, acceptance/nonacceptance, Section 11-200-27, HAR determinations, etc.)</u>: submit this form with the original document.
    Documents submitted with this form are subject to the timeliness requirements set forth in Section 11-200-3, HAR.

Chapter 7: Applicant Actions under HEPA

Note that the following Administrative Rules and Statutes will be referred to extensively throughout this chapter:

- Chapter 343, HRS Environmental Impact Statements
- Chapter 11-200, HAR Environmental Impact Statement Rules
- Chapter 11-200-8(11), HAR Exempt classes of action for the acquisition of land
- Chapter 11-201, HAR Environmental Council Rules of Practice and Procedure

7.1 Goals of this Chapter

This chapter will provide you with the specific requirements for applicant actions (not declared exempt) under HEPA. You will learn to use the proper terminology associated with agency actions, as well as the specific steps of the process for actions.

7.2 Proper Terminology for Applicant Actions

For applicant actions, the person that seeks a discretionary approval from an agency is termed the "**applicant.**" The agency issuing the discretionary approval and that oversees the HEPA process for the applicant is termed the "**approving agency**."

For applicant actions, the process begins with the applicant engaging in the early consultation process with ongoing dialogue with the approving agency.

The approving agency also makes an initial determination on the need for an EA (exemption declaration) and the need for an EIS (FONSI or EISPN). In the event that the proposing agency determines from the EA that a full EIS is required (EISPN), the entity that determines the acceptability of the subsequent FEIS is the "**approving agency.**"

7.3 Process Flow Charts, Forms, Sample Letters and Checklists

Please refer to Exhibits 7-1 to 7-11.

For a step-by-step guide through the EIS process applicant actions, see Flowcharts on pages 69-70

THIS GUIDEBOOK IS FOR GENERAL INFORMATION ONLY. CONSULT THE STATUTE AND THE RULES FOR SPECIFIC APPLICABILITY, JUDICIAL CHALLENGE AND DETAILED STEPS TO IMPLEMENTATION AND PROCESS OF HEPA.

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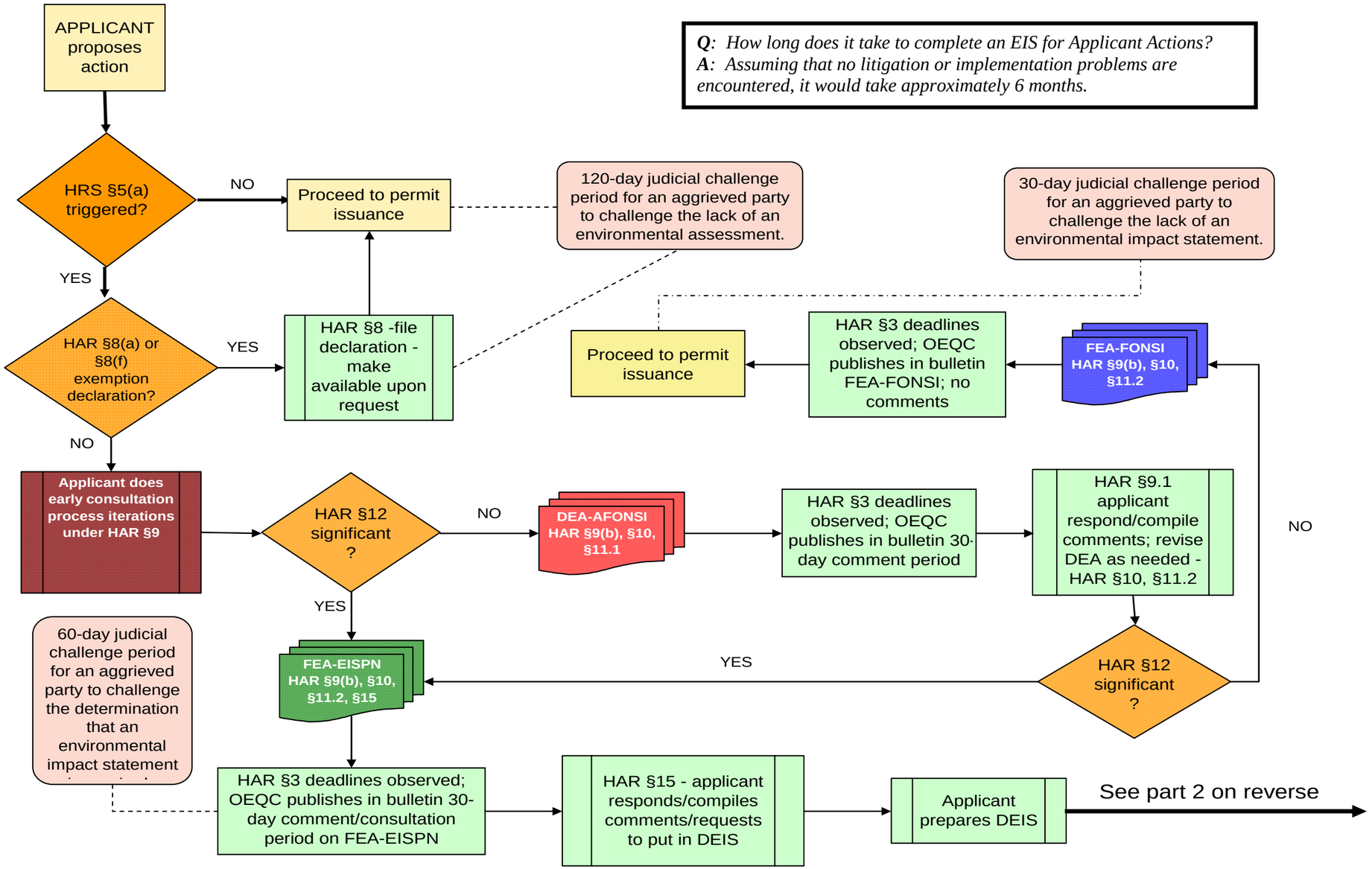
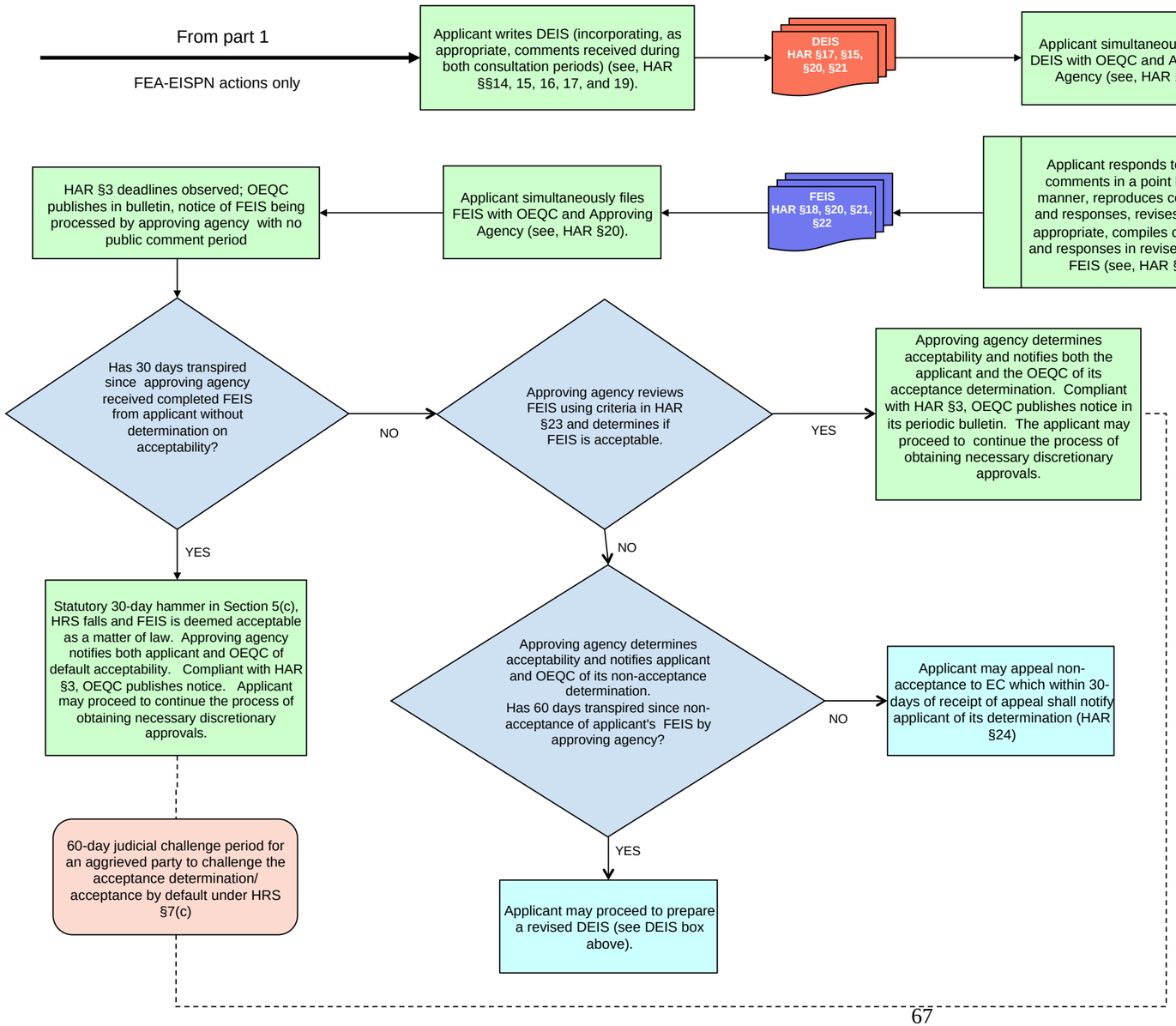
HEPA FLOWCHART, APPLICANT ACTIONS, PART 1

Important: This flowchart is a guide to the milestone events in the process and is not a substitute for reading and complying with the HEPA statute and administrative rules. HAR in this flowchart refers to Chapter 11-200, and section numbers are provided for brevity. HRS in this flowchart refers to Chapter 343, and section numbers are provided for brevity.
This guidebook is for general guidelines only. Consult the statute and the rules for specific applicability, judicial challenge, and detailed steps to implementation and process of HEPA.



HEPA FLOWCHART, APPLICANT ACTIONS, PART 2

Important: This flowchart is a guide to the milestone events in the process and is not a substitute for reading and complying with the HEPA statute and administrative rules. HAR in this flowchart refers to Chapter 11-200, and section numbers are provided for brevity. HRS in this flowchart refers to Chapter 343, and section numbers are provided for brevity.
This guidebook is for general guidelines only. Consult the statute and the rules for specific applicability, judicial challenge, and detailed steps to implementation and process of HEPA.



***Q**: Who is the approving agency for an EIS applicant action?*
***A**: The agencies involved in processing the various discretionary permits for a proposed action*

EXHIBIT 7-3

SAMPLE LETTER FOR APPROVING AGENCY FILING A DRAFT ENVIRONMENTAL ASSESSMENT AND ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR APPLICANT ACTIONS)

Approving Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Approving Agency Name) hereby transmits the draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

Enclosed is a completed OEQC Publication Form, two copies of the DEA-AFONSI, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact (Approving Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Approving Agency Official)

Enclosures

C: Applicant

EXHIBIT 7-4

SAMPLE LETTER FOR APPROVING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR APPLICANT ACTIONS)

Approving Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Approving Agency Name) hereby transmits the final environmental assessment and finding of no significant impact (FEA-FONSI) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

The (Approving Agency Name) has included copies of public comments and the corresponding responses from the applicant that were received during the 30-day public comment period on the draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI).

Enclosed is a completed OEQC Publication Form, two copies of the FEA-FONSI, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact (Approving Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Approving Agency Official)

Enclosures

C: Applicant

EXHIBIT 7-5

SAMPLE LETTER FOR APPROVING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE WITH THE OEQC (FOR APPLICANT ACTIONS)

Approving Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

With this letter, the (Approving Agency Name) hereby transmits the final environmental assessment and environmental impact statement preparation notice (FEA-EISPN) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

We understand that publication of the FEA-EISPN in the Environmental Notice will initiate a 30-day public consultation period for parties to comment on the action and to request to become consulted parties in the preparation of the draft environmental impact statement.

Enclosed is a completed OEQC Publication Form, two copies of the FEA-EISPN, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

We understand that the applicant will prepare a subsequent draft EIS at the conclusion of the public consultation period for simultaneous filing with your office and our agency.

If there are any questions, please contact (Approving Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Approving Agency Official)

Enclosures

C: Applicant

EXHIBIT 7-6

SAMPLE LETTER FOR APPROVING AGENCY FILING A FINAL ENVIRONMENTAL ASSESSMENT AND ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE FOLLOWING A DRAFT ENVIRONMENTAL ASSESSMENT AND ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT WITH THE OEQC (FOR APPLICANT ACTIONS)

Approving Agency Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Dear Director:

Prior to this letter, we had transmitted to you a draft environmental assessment and anticipated finding of no significant impact (DEA-AFONSI), notice of which was published in the _____, 20__, edition of the Environmental Notice. At the conclusion of the 30-day public comment period, the (Approving Agency Name) reviewed the information and comments in light of the significant criteria set forth in Section 11-200-12, Hawai‘i Administrative Rules. We now find that the proposed action may have a significant effect on the environment. With this letter, the (Approving Agency Name) hereby transmits the final environmental assessment and environmental impact statement preparation notice (FEA-EISPN) for the (Action Name) situated at (TMK Number), in the (District Name) on the island of (Island Name) for publication in the next available edition of the Environmental Notice.

We understand that publication of the FEA-EISPN in the Environmental Notice will initiate a 30-day public consultation period for parties to comment on the applicant's action and to request to become consulted parties in the applicant's preparation of the draft environmental impact statement. At the conclusion of the public consultation period on the FEA-EISPN, we further understand that the applicant will simultaneously file a draft EIS with your office and our agency.

Enclosed is a completed OEQC Publication Form, two copies of the FEA-EISPN, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact (Approving Agency Contact Name) at (Contact Telephone Number).

Sincerely,

(Approving Agency Official)

Enclosures

C: Applicant

EXHIBIT 7-7

SAMPLE LETTER FOR APPLICANT FILING A DRAFT ENVIRONMENTAL IMPACT STATEMENT SIMULTANEOUSLY WITH THE OEQC AND THE APPROVING AGENCY (FOR APPLICANT ACTIONS)

Applicant
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai'i
235 S. Beretania Street, Room 702
Honolulu, Hawai'i 96813

Name of Official, Title
Name of Approving Agency
Street Address
City, Hawai'i 96___

Dear Director and Mr./Ms. Official:

With this letter, (Applicant Name) hereby transmits the documents package for the draft environmental impact statement for the (Action Name) situated at (TMK Number) in the (District Name) on the island of (Island Name) for publication of a notice of availability for public comment for 45-days in the next available edition of the Environmental Notice. The draft EIS has included copies of all written comments received during the early consultation period and during the 30-day public consultation period for the FEA-EISPN.

Also enclosed is a distribution list for the verification of OEQC under Section 11-200-20, Hawai'i Administrative Rules. Upon receiving verification from OEQC (along with the bulletin proof of the notice containing the pertinent details for commenters), we will make the draft EIS and the bulletin proof available to those so indicated on the distribution list so that they will have the full 45-day statutory period to review and comment on the draft EIS.

Finally, enclosed is a completed OEQC Publication Form, two copies of the draft EIS, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to the OEQC.

If there are any questions, please contact (Applicant) at (Applicant Telephone Number).

Sincerely,

(Applicant)

Enclosures

EXHIBIT 7-8

SAMPLE LETTER FOR AN APPLICANT FILING A FINAL ENVIRONMENTAL IMPACT STATEMENT SIMULTANEOUSLY WITH THE OEQC AND THE APPROVING AGENCY (FOR APPLICANT ACTIONS)

Applicant Name
[Street Address]
[City, ST ZIP Code]
Date

Director
Office of Environmental Quality Control
Department of Health, State of Hawai‘i
235 S. Beretania Street, Room 702
Honolulu, Hawai‘i 96813

Name of Official, Title
Name of Approving Agency
Street Address
City, Hawai‘i 96___

Dear Director and Mr./Ms. Approving Agency Official:

With this letter, the (Applicant Name) hereby transmits the documents package for the final environmental impact statement for the (Action Name) situated at (TMK Number) in the (District Name) on the island of (Island Name) for publication of a notice of availability in the next available edition of the Environmental Notice and for evaluation for acceptability under Section 11-200-23, Hawai‘i Administrative Rules.

Also enclosed is a distribution list for the verification of OEQC under Section 11-200-20, Hawai‘i Administrative Rules. Upon receiving verification from OEQC (along with the bulletin proof of the notice containing the pertinent details for commenters), we will make the final EIS and the bulletin proof available to those so indicated on the distribution list.

Finally, enclosed is a completed OEQC Publication Form, two copies of the final EIS, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to the OEQC.

If there are any questions, please contact (Applicant Name) at (Contact Telephone Number).

Sincerely,

(Name of Applicant)

Enclosures

EXHIBIT 7-9

HRS 343-5(c) – APPLICANT ACTION ENVIRONMENTAL ASSESSMENT CHECKLIST

Name of Action: _____

Island and Tax Map Key: _____

Applicant:_____

Approving Agency: _____

FOR OEQC USE ONLY
Date Received:
Date Published:
Staff reviewer:
Comment Deadline:
Public Library:

PART A: Draft Environmental Assessment (accompanied by Anticipated Finding of No Significant Impact (AFONSI) determination by the approving agency with 30-day public comment period)

Identification of Section 343-5(a), HRS, trigger(s):

Applicable sections *(check all that apply)*:

___ Use of state or county lands or funds
___ Use in the conservation district
___ Use within shoreline setback area
___ Use of historic site or district
___ Waste water facility, waste-to-energy facility, landfill, oil refinery, or power-generating facility
___ Use in the Waikiki district
___ Amendment to county general plan
___ Reclassification of conservation lands to urban
___ Construction or modification of helicopter facilities

Content Requirements (see HAR §11-200-10, items1 thru 13)

___ Notice of determination[5] letter from the approving agency requesting publication of its notice of determination of an anticipated finding of no significant impact (AFONSI) based on the attached draft environmental assessment.
___ Identification of agencies, citizen groups, and individuals consulted in making the assessment
___ General description of the action's technical, economic, social, and environmental characteristics; time frame; funding source
___ Summary description of the affected environment, including cultural resources and practices, suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
___ Identification and summary of impacts (direct, indirect and cumulative) to the affected environment described above and proposed mitigation measures
___ Alternatives considered
___ Discussion of findings and reasons supporting the agency anticipated determination
___ List of all required permits and approvals (both discretionary and ministerial at the state, federal, or county levels), if any
___ Written comments and responses to comments under the early consultation provisions under HAR 11-200-9(a)(1), and 11-200-9(b)(1)

PART B: Final Environmental Assessment (accompanied by Finding of No Significant Impact (FONSI) determination by the approving agency with no public comment period)

___ Notice of determination[6] letter from the approving agency requesting publication of its notice of determination of a finding of no significant impact (FONSI) based on the attached final environmental assessment.
___ Written comments and responses to the comments under the statutorily prescribed

FOR OEQC USE ONLY
Date Received:
Date Published:

[5] AFONSI – by rule (Section 11-200-11.1, HAR), the notice of determination from the approving agency agency shall indicate: (1) the identity of the applicant; (2) the identity of the accepting authority (which in the case of applicant actions is the approving agency that determines acceptability); (3) a brief description of the proposed action; (4) the determination by the approving agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person at the approving agency to contact for more information.

[6] FONSI – by rule (Section 11-200-11.2, HAR), the notice of determination from the approving agency shall indicate: (1) the identity of the applicant; (2) the identity of the accepting authority (which in the case of applicant actions is the approving agency that determines acceptability); (3) a brief description of the proposed action; (4) the determination by the approving agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person at the approving agency to contact for more information.

public review periods for the draft environmental assessment

PART C: Final Environmental Assessment (accompanied by Environmental Impact Statement Notice (EISPN) determination by the approving agency with 30-day public comment period)

FOR OEQC USE ONLY
Date Received:
Date Published:
Staff reviewer:
Comment Deadline:

Identification of Section 343-5(a), HRS, trigger(s) (omit if this is a FEA-EISPN following a DEA):

Applicable sections *(check all that apply)*:

___ Use of state or county lands or funds
___ Use in the conservation district
___ Use within shoreline setback area
___ Use of historic site or district
___ Waste water facility, waste-to-energy facility, landfill, oil refinery, or power-generating facility
___ Use in the Waikiki district
___ Amendment to county general plan
___ Reclassification of conservation lands to urban
___ Construction or modification of helicopter facilities

Content Requirements (see HAR §11-200-10, items1 thru 13)

___ Notice of determination[7] letter from the approving agency requesting publication of its notice of determination of an environmental impact statement preparation notice (EISPN) based on the attached final environmental assessment
___ Identification of the proposing agency
___ Identification of agencies, citizen groups, and individuals consulted in making the assessment
___ General description of the action's technical, economic, social, and environmental characteristics; time frame; funding source
___ Summary description of the affected environment, including cultural resources and practices, suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps
___ Identification and summary of impacts (direct, indirect and cumulative) to the affected environment described above and proposed mitigation measures
___ Alternatives considered
___ Discussion of findings and reasons supporting the agency anticipated determination
___ List of all required permits and approvals (both discretionary and ministerial at the state, federal, and county levels), if any
___ Written comments and responses to the comments under the early consultation under HAR 11-200-9(a)(1), 11-200-9(b)(1), and 11-200-15

With the submittal of the draft environmental impact statement, an HRS 343-5(c) APPLICANT ACTIONS EIS CHECKLIST will be generated and used until the completion of the EIS process (acceptance or non-acceptance).

[7] EISPN – by rule (Section 11-200-11.2, HAR), a notice of determination from the approving agency shall indicate: (1) the identity of the applicant; (2) the identity of the accepting authority (which in the case of applicant actions is the approving agency that determines acceptability); (3) a brief description of the proposed action; (4) the determination by the approving agency; (5) the reasons supporting the determination; and (6), the name, address, and telephone number of a person at the approving agency to contact for more information.

EXHIBIT 7-10

HRS 343-5(c), APPLICANT ACTION ENVIRONMENTAL IMPACT STATEMENT CHECKLIST

Append to FEA-EISPN Applicant Actions Checklist

Action (Project) Name: _____

Applicant:_____

Approving Agency[1] _____

Island and Tax Map Key_____

FOR OEQC USE ONLY
Date DEIS Received:
Date of Publication:
Comment Deadline:

PART A: DRAFT ENVIRONMENTAL IMPACT STATEMENT (filed by the applicant simultaneously with OEQC and the Approving Agency with OEQC Publication Form and Distribution List for verification by OEQC - with 45-day public comment period)

Content Requirements (see Section 11-200-17, HAR)

___ 1. Summary sheet (abstract) which concisely discusses the following:
- ___ Brief description of the action
- ___ Significant beneficial and adverse impacts (including cumulative and secondary impacts)
- ___ Proposed mitigation measures
- ___ Alternatives considered
- ___ Unresolved issues
- ___ Compatibility with land use plans and policies
- ___ Listing of permits or approvals

___ 2. Table of contents

___ 3. Statement of purpose and need for the proposed action

___ 4. Project description which shall include the following:
- ___ A detailed map (U. S. Geological Survey topographic, Flood Insurance Rate Maps, or Floodway Boundary Maps) and a related regional map

Statement of objectives
- ___ General description of the action's technical, economic, social and environmental characteristics
- ___ Use of public funds or lands for the action (if any)
- ___ Phasing and timing of action
- ___ Summary of technical data, diagrams and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public
- ___ Historic (archaeological and cultural) perspective

___ 5. Discussion of alternatives that could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected
- ___ Rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions
- ___ Alternatives that enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks (if any)
- ___ No action alternative
- ___ Alternatives requiring actions of a significantly different nature that would provide similar benefits with different environmental impacts (if any)
- ___ Alternatives related to different designs or details of the proposed actions, which would present different environmental impacts (if any)

___ Alternative of postponing the action pending further study (if any)
___ Alternative locations for the proposed project (if any)
___ Comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative
___ Detailed explanation(s) why alternatives were rejected

___ 6. Description of the environmental setting
___ Description of the environment[2] in the vicinity of the action as its exists before commencement of the action from a local and regional perspective
___ Environmental resources that are rare or unique to the region and the project site (including natural or human- made resources of historic, archaeological, contemporary cultural, or aesthetic significance)
___ Reference to related projects, public and private, existent or planned in the region
___ Population and growth characteristics, population and growth assumptions used to justify the action
___ Identification of data sources used to identify, qualify, or evaluate any and all environmental consequences

___ 7. Relationship to land use plans, policies, and controls
___ 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
___ Where a conflict or inconsistency exists, reasons why the agency or applicant has decided to proceed notwithstanding the absence of full reconciliation
___ List and status of necessary approvals from governmental agencies, boards or commissions or other similar groups having jurisdiction

___ 8. Probable impact (using the environmental setting described above as the backdrop for analysis and discussion)
___ Impacts (direct, indirect, and cumulative) of the project on the environment
___ Impacts (direct, indirect, and cumulative) of the natural physical and human environment on the project
___ Consideration of all phases of the action and consideration of all environmental consequences
___ Discussion of direct and indirect effects
___ Discussion of cumulative environmental impacts in the reasonably foreseeable future of the proposed action in relation to other projects
___ Population and growth impacts of an action
___ Discussion and incorporation of necessary data (if the proposed action constitutes an direct or indirect source of pollution determined by a government agency)

___ 9. Relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long- term productivity
___ Discussion of the extent to which the proposed action involves trade-offs among short-term and long-term gains and losses
___ Discussion of the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment

NOTE: *Short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.*

___ 10. Separate and distinct section containing the description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented
___ Identification of unavoidable impacts
___ Identification of the extent to which the action makes use of non-renewable resources during the phases of the action

NOTE: *Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.*

___ 11. Addresses all probable adverse environmental effects which cannot be avoided

___ Water or air pollution
___ Urban congestion
___ Threats to public health
___ Consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy
___ Rationale for proceeding with proposed action notwithstanding unavoidable effects
___ Discussion of other interests and considerations of governmental policies that are thought to offset the adverse environmental effects of the proposed action.
___ Discussion of the extent to which stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

___ 12. Mitigation measures proposed to avoid, minimize, rectify or reduce impact
___ Provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters and interests therein (if any)
___ Discussion of measures to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable
___ Where a particular mitigation measure has been chosen from among several alternatives, the measures have been discussed and the reasons for the choice have been disclosed
___ Timing of each step in the mitigation process
___ What performance bonds (if any) may be posted
___ Provisions proposed to assure that the mitigation measures will be taken

___ 13. Separate and distinct section summarizing unresolved issues
___ Discussion of how such issues will be resolved prior to commencement of the action or discussion of the overriding reasons for proceeding without resolving the problems

___ 14. Separate and distinct section containing a list that identifies all government agencies, other organizations and private individuals consulted in preparing the statement (consulted parties and commenters during the FEA-EISPN process)
___ Identity of all persons, firms, or agency preparing the statement by contract or by authorization

___ 15. Separate and distinct section containing reproduction of all substantive comments and responses made during the consultation process
___ List of persons or agencies who were consulted and had no comment

EIS Style (see Section 11-200-19, HAR)

___ 1. The draft EIS is written in a way that conveys the required information succinctly in a form easily understood by members of the public and public decision makers

___ 2. The scope of the draft EIS is commensurate with the scope of the proposed action and its impact

___ 3. Data and analyses in the draft EIS are commensurate with the importance of the impact

___ 4. Less important material is summarized, consolidated, or simply referenced

___ 5. The draft EIS indicates at appropriate points in the text any underlying studies, reports and other information obtained and considered in preparing the draft EIS including cost benefit analyses and reports required under other legal authorities

___ 6. The draft EIS focuses on important issues

___ 7. The draft EIS is an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference

Filing of an EIS (see Section 11-200-20, HAR, 2008 Distribution Policy)

___ 1. The applicant filed the draft EIS with the approving agency along with the minimum amount of copies required by the approving agency

___ 2. The applicant simultaneously filed four printed copies (or alternatively, one electronic copy and two hard copies) of the draft EIS with the Office of Environmental Quality Control

___ 3. The applicant signed the draft EIS and indicated that the draft EIS and all ancillary documents were prepared under the applicant's direction or supervision and that the information submitted, to the best of the applicant's knowledge fully addresses document content requirements as set for in Section 11-200-17, HAR

Distribution (see Section 11-200-21, HAR, and 2008 Distribution Policy)

___ 1. The applicant submitted a distribution list with the draft EIS for verification by the Office of Environmental Quality Control

___ 2. The Office of Environmental Quality Control issued a written verification of the distribution list before the issue date of The Environmental Notice announcing the draft EIS

___ 3. The Office received the fifth printed copy (or the third copy for applicants submitting an electronic copy) of the draft EIS by mail/courier, thus confirming the distribution of the document on ___

PART B: FINAL ENVIRONMENTAL IMPACT STATEMENT (filed by the applicant simultaneously with OEQC and the Approving Agency with OEQC Publication Form and Distribution List for verification by OEQC – with public comment period).

FOR OEQC USE ONLY
Date FEIS Received:
Date of Decision: ___ Acceptance ___ Non-acceptance
Statutory Hammer falls ___ Yes (date_____) ___ No
Date Decision Received:
Date Decision Published:

Content Requirements (see Section 11-200-18, HAR)

___ 1. The draft EIS was revised as the final EIS to incorporate substantive comments received during the 45-day public review period

___ 2. Reproductions of all timely-received letters received containing substantive comments and, as applicable, summaries of any scoping meetings

___ 3. A list of persons, organizations, and public agencies commenting on the draft EIS

___ 4. The point-by-point responses of the applicant to each substantive question, comment, or recommendation received in the review and consultation process

___ 5. The text of the final EIS is written in a format that allows the reader to easily distinguish changes made to the draft EIS

EIS Style (see Section 11-200-19, HAR)

___ 1. The final EIS is written in a way that conveys the required information succinctly in a form easily understood by members of the public and public decision makers

___ 2. The scope of the final EIS is commensurate with the scope of the proposed action and its impact

___ 3. Data and analyses in the final EIS are commensurate with the importance of the impact

___ 4. Less important material is summarized, consolidated, or simply referenced

___ 5. The final EIS indicates at appropriate points in the text any underlying studies, reports and other information obtained and considered in preparing the final EIS including cost benefit analyses and reports required under other legal authorities

___ 6. The final EIS focuses on important issues

___ 7. The final EIS is an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference

Filing of an EIS (see Section 11-200-20, HAR, 2008 Distribution Policy)

___ 1. The applicant filed the final EIS with the approving agency along with the minimum amount of copies required by the approving agency

___ 2. The applicant simultaneously filed two printed copies (or alternatively, one electronic copy and two hard copies) of the final EIS with the Office of Environmental Quality Control

___ 3. The applicant signed the final EIS and indicated that the final EIS and all ancillary documents were prepared under the applicant's direction or supervision and that the information submitted, to the best of the applicant's knowledge fully addresses document content requirements as set forth in Sections 11-200-17 and 11-200-18, HAR

Distribution (see Section 11-200-21, HAR, and 2008 Distribution Policy)

___ 1. The applicant submitted a distribution list with the final EIS for verification by the Office of Environmental Quality Control

___ 2. The Office of Environmental Quality Control issued a written verification of the distribution list before the issue date of The Environmental Notice announcing the final EIS

___ 3. The Office received the fifth printed copy (or the third copy for applicants submitting an electronic copy) of the final EIS by mail/courier, thus confirming the distribution of the document on ___

Public Review Requirements (see Section 11-200-22, HAR)

___ 1. The responses to timely received (postmark or time stamped) comments includes:
- ___ Point-by-point discussion of the validity, significance, and relevance of comments
- ___ Discussion as to how each comment was evaluated and considered in planning the proposed action
- ___ Response letters reproduced in the final EIS indicate verbatim changes that have been made to the text of the draft EIS
- ___ Response letters describe the disposition of significant environmental issues raised
- ___ Issues raised when the applicant's position is at variance with the recommendations and objections raised in the comments are addressed in detail, giving reasons why specific comments were not accepted, and factors of overriding importance warranting an override of the suggestions

NOTE: *An addendum document to the draft environmental impact statement shall reference the original draft environmental impact statement it attaches to and comply with all applicable filing, public review, and comment requirements set forth in Sub-Chapter 7, Chapter 11-200, HAR*

Determination of Acceptability (see Section 11-200-23, HAR)

____1. Certification of satisfactory completion of the procedures for environmental assessment (Section 11-200-9, HAR), consultation (Section 11-200-15, HAR), public review (Section 11-200-22, HAR), preparation and submission of the statement (Sub-Chapter 7, HAR 11-200)

____ 2. Certification of satisfactory completion of the content requirements (for environmental assessment and environmental impact statement (Chapter HAR 11-200)

____ 3. Certification that comments received during the review process have received responses satisfactory to the approving agency (or agency with authority to determine acceptability - see end note 1)

[1] Section 343-5(c), HRS, states in pertinent part that "[t]he authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement." [Emphasis supplied].

[2] Section 11-200-2, HAR, defines "environment" as "humanity's surroundings, inclusive of all the physical, economic, cultural and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

EXHIBIT 7-11

SECTION 343-5(c), HRS, APPLICANT ACTION
SECTION 11-200-3(d), HAR, INFORMATION FORM FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE OF THE OEQC

Please read the instructions on page 3 of this form.

A. DATE:

B. TITLE OF ACTION: _____

C. TYPE OF DOCUMENT:

(1) DEA with AFONSI
(2) FEA with FONSI
(3) FEA with EISPN
(4) DEIS simultaneously filed with approving agency/OEQC
(5) FEIS simultaneously filed with approving agency/OEQC

D. NOTICE OF APPROVING AGENCY DETERMINATION ATTACHED (if any):

(1) AFONSI
(2) FONSI
(3) EISPN
(4) Acceptance/Non-acceptance of FEIS
(5) Section 11-200-27, HAR, Notice that SEIS not required
(6) Withdrawal

E. APPLICANT: _____

CONTACT FOR APPLICANT: _____

CONSULTANT FOR APPLICANT (if any):_____

F. APPROVING AGENCY: _____

CONTACT FOR APPROVING AGENCY: _____

G. ISLANDS AFFECTED BY THE ACTION: _____

H. TAX MAP KEY NUMBERS: _____

I. STREET ADDRESS: _____

J. NEAREST GEOGRAPHICAL LANDMARKS: _____

K. LATITUDINAL/LONGITUDINAL COORDINATES: _____

L. STATUTORY/ADMINISTRATIVE AUTHORITIES: _____

M. BRIEF NARRATIVE SUMMARY OF PROPOSED ACTION:

N. FORM PREPARER:

0. CONTACT INFORMATION:

INSTRUCTIONS FOR COMPLETING THE INFORMATION FORM FOR PUBLICATION IN THE ENVIRONMENTAL NOTICE (FOR APPLICANT ACTIONS, REVISION 2011)

1. Ascertain if you have the right form. Are you a proposing agency? If so, you are using the wrong form. Are you an approving agency with authority to grant a permit to an applicant? If so, continue. For draft and final EIS documents, are you an applicant seeking a permit from the approving agency? If so, continue.
2. Enter the date in item A.
3. Enter the title of the proposed action in item B.
4. Circle the type of document being submitted in item C. A notice of determination must accompany all environmental assessments from the approving agency. Environmental impact statements must be filed simultaneously with the approving agency and the Office of Environmental Quality Control.
5. Circle (if any) the type of notice of approving agency determination attached in item D. For environmental assessments this should correspond to the documents listed in item C of the form. No agency determination letter is required for applicant filings of FEIS documents. Withdrawals must be on agency letterhead, signed, and dated.
6. In item E, list the name, mailing address, telephone, email (if any) of the applicant, including the name of the contact for the applicant. If there is a consultant for the applicant, list the name, address, telephone, email (if any) of the consultant, including the name of the contact for the consultant. Use more paper if necessary.
7. In item F, list the name, mailing address, telephone, email (if any) of the approving agency, including the name of the contact for the approving agency.
8. In item G, list the islands affected by the proposed action (e.g., Kauaʻi, Niʻihau, Oʻahu, Molokaʻi, Lanaʻi, Kahoʻolawe, Maui, Hawaiʻi, Northwestern Hawaiian Islands, etc.)
9. In item H, list the tax map key numbers affected by the proposed action.
10. In item I, list the street addresses and city of the location of the proposed action.
11. In item J, list the nearest geographical landmarks.
12. In item K, list the latitudinal/longitudinal coordinates.
13. In item L, list the statutory/administrative authorities.
    - Use of state/county lands/funds – Section 343-5(a)(1), HRS
    - Use of conservation district – Section 343-5(a)(2), HRS
    - Use within the shoreline setback area – Section 343-5(a)(3), HRS
    - Use within any historic site – Section 343-5(a)(4)
    - Use within the Waikiki Special District – Section 343-5(a)(5), HRS
    - Amendments to existing county general plans – Section 343-5(a)(6), HRS
    - Reclassification of conservation district lands – Section 343-5(a)(7), HRS
    - Helicopter facilities, construction/expansion/modification – Section 343-5(a)(8), HRS
    - Wastewater treatment units; waste to energy facility; landfill; oil refinery; or, power generating facility – Section 343-5(a)(9), HRS
    - Major federal action – National Environmental Policy Act
14. In item M, provide a summary in two-hundred-fifty words or less of the proposed action.
15. In items, N and O, list the name of the person who prepared this form along with their contact information (address, telephone number, email, facsimile, etc.)
16. <u>For DEA, FEA documents</u>: Submit this form, along with four hard copies of the supporting environmental assessment (or two hard copies and an Adobe Acrobat PDF file of the supporting environmental assessment), along with the notice of determination on the environmental assessment.
    <u>For DEIS, FEIS documents</u>: Submit this form, along with four hard copies of the supporting environmental impact statement (or two hard copies and an Adobe Acrobat PDF file of the supporting environmental impact statement).
    <u>For other documents (withdrawals, acceptance/non-acceptance, Section 11-200-27, HAR determinations, etc.)</u>: submit this form with the original document.
    Documents submitted with this form are subject to the timeliness requirements set forth in Section 11-200-3, HAR.

Chapter 8: Glossary of Terms

Acceptance – A formal determination that the document is required to be filed pursuant to Section 343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement (see Section 343-2, HRS).

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

Action – Any program or project to be initiated by any agency or applicant. Examples: the purchase of office equipment and supplies; the purchase of private land; the use of conservation district land; the purchase of unwanted county highway remnants; the demolition of an old building, etc. A subset of these actions does meet certain criteria that require attention under HEPA.

Anticipated Finding of No Significant Impact (AFONSI) – A proposed action is anticipated to have minimal or no significant impact on the environment.

Agency – Any department, office, board, or commission of the [State] or county government which is a part of the executive branch of that government. In practice, HEPA agencies are found in the executive branch of State and County governments. The judicial or legislative branches of State or county governments do not meet this statutory definition. Furthermore, the government of the United States of America and its various executive branch entities do not meet the statutory definition of agency under HEPA.

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

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

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

Approval - A discretionary consent required from an agency prior to actual implementation of an action. Under HEPA, an agency proposing an action (e.g., the Department of Transportation), may require "approval" of another agency (e.g., the Department of Land and Natural Resources, who holds title to the land that the Department of Transportation proposes to use). Therefore, one "approving agency" will emerge from the many to clear the environmental review process. Both “agency actions” and “applicant actions” may require approvals.

Approving agency – An agency that issues an approval prior to actual implementation of an action.

Draft Environmental Assessment (DEA) – The environmental assessment submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a negative declaration determination.

Draft environmental impact statement (DEIS) – The initial statement filed file for public review

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

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

Environmental Impact Statement (EIS) – An informational document prepared in compliance with the rules adopted under Section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

Environmental Impact Statement Preparation Notice (EISPN) – A determination based on an EA that the subject action may have a significant effect on the environment and therefore, will require the preparation of an EIS.

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

Final Environmental Assessment (FEA) – Either the EA submitted by a proposing agency or an approving agency following the public review and comment period for the DEA and in support of either a negative declaration or a preparation notice determination; or the EA submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.

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

Finding of No Significant Impact (FONSI) – A document that briefly states why an action will not significantly affect the environment, thus voiding the requirement for an EIS. It will include a summary of the conclusions of the environmental assessment and will note any environmental documents related to it. If the EA is attached, it need not repeat any of the EA's discussion, but may incorporate it by reference. It is also always signed by the decision maker.

Hawaii Environmental Policy Act (HEPA) – Enacted in 1974, it established environmental policies and guidelines for state agencies.

NEPA (National Environmental Policy Act) – 1969, Public Law 91-190, 42 U.S.C. §4321-4347, as amended. It requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.

Notice of Intent (NOI) – A notice that an environmental impact statement will be prepared and considered.

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

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

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

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

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

Significant effect - "… the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State" (see Section 343-2, HRS).

Triggers – Specific instances when a proposing agency or an approving agency must prepare an EA. There are nine types of actions that constitute the "triggers.

Acronyms and Abbreviations

AFONSI	Anticipated Finding of No Significant Impact
CE	Categorical Exclusion
DEA	Draft Environmental Assessment
DEIS	Draft Environmental Impact Statement
DLNR	Department of Land and Natural Resources
EA	Environmental Assessment
EIS	Environmental Impact Statement
EISPN	Environmental Impact Statement Preparation Notice
FEA	Final Environmental Assessment
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
NEPA	National Environmental Policy Act
NOI	Notice of Intent
OEQC	Office of Environmental Quality Control
SLH	Session Laws of Hawaii

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For more information regarding Chapter 343, HRS, contact the Office of Environmental Quality Control at:

State of Hawaii
Office of Environmental Quality Control
235 S. Beretania St, Room 702
Honolulu, Hawaii 96813
Phone: (808) 586-4185
Fax: (808) 586-4186
E-mail: oeqc@doh.hawaii.gov
www.hawaii.gov/health/environmental/environmental/oeqc/index.html

THIS GUIDEBOOK IS FOR GENERAL INFORMATION ONLY. CONSULT THE STATUTE AND THE RULES FOR SPECIFIC APPLICABILITY, JUDICIAL CHALLENGE AND DETAILED STEPS TO IMPLEMENTATION AND PROCESS OF HEPA.

Hawaii Department of Health
State Revolving Fund Program
Exemption Declaration and Environmental Assessment
Review Checklist

Check the box that applies to this submittal:

☐ CWSRF Project ☐ DWSRF Project

Check the box that applies to this submittal:

☐ Exemption Declaration ☐ Environmental Assessment (EA) ☐ EA Reaffirmation

APPLICANT INFORMATION	
Applicant:	
Contact Person:	Contact Phone:
Project Name:	Project No:
Project Description:	

For sections A-C below, check applicable "Yes", "No", or "N/A" box next to the given statements.

A. DOCUMENT SUBMITTAL & PUBLIC NOTICE	YES	NO	N/A	DOH REVIEW / CONCURRENCE
Environmental Document Title: *(Fill in)* Environmental Documents submitted: *(Fill in)*				
If a prior-decision document submitted, is it less than 5 years old?				
If no, has the prior decision document been reaffirmed?				
Have public notice requirements been met?				
Have public meeting requirements been met?				
Have response to public comment requirements been met?				

B. SERP CRITERIA ADDRESSED	YES	NO	N/A	DOH REVIEW / CONCURRENCE
1. Identification of applicant				
2. Identification of approving agency				
3. All agencies consulted				
4. Detailed Project Description (maps, technical data, economic and cultural effects and historical perspective)				
5. Description of affected environment				
6. Impacts and alternatives analysis				
7. Mitigation measures				
8. Determination				
9. Findings and reasons				
10. List of federal, state, and county permits and required approval				
11. Early consultation, solicitation of written comments and responses				
12. Population projections current				
13. Range of alternatives considered including “No-action” alternative				
a. Designation of a study area comparable to the final system				
b. Present and future conditions				
14. Impact analysis addressed:				
a. primary and secondary impacts				
b. land use/social parameters				
c. cumulative impacts				
d. other public works projects				
e. sensitive issues				
f. Consistency with population projects used to develop State implementation plans under the Clean Air Act				

C. CROSS-CUTTERS ADDRESSED (APPLIES TO EXEMPTION DECLARATION AND ENVIRONMENTAL ASSESSMENT):	YES	NO	N/A	DOH REVIEW/ CONCURRENCE	U.S. EPA REVIEW/ CONCURRENCE (when req'd)
1. Archeological and Historic Preservation Act (16 U.S.C. § 469a-1)					
2. Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c)					
3. Clean Air Act (42 U.S.C. § 7401)					
4. Coastal Barriers Resources Act (16 U.S.C. § 3501)					
5. Coastal Zone Management Act (16 U.S.C. § 1451)					
6. Endangered Species Act (16 U.S.C. § 1531)					
7. Environmental Justice (Executive Order 12898)					
8. Farmland Protection Policy Act (7 U.S.C. § 4201)					
9. Fish and Wildlife Coordination Act (16 U.S.C. § 661)					
10. Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)					
11. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*)					
12. Marine Mammal Protection Act (16 U.S.C. §§ 703 *et seq.)*					
13. Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*)					
14. National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq.*)					
15. Protection of Wetlands (Executive Order 11990 (1977), as amended by Executive Order 12608 (1997))					
16. Rivers and Harbors Act, (33 U.S.C. § 403)					
17. Safe Drinking Water Act (42 U.S.C. § 300f)					
18. Wild and Scenic Rivers Act (16 U.S.C. § 1271)					

PLEASE CHECK THE BOX THAT APPLIES TO THE PROJECT:

☐ The County has reviewed the impacts of the proposed project, and recommends that the project is exempt from preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in accordance with Chapter 343 of the Hawaii Revised Statues (HRS) and Chapter 11-200 of the Hawaii Administrative Rules (HAR), and 40 CFR §35.3140 (for CWSRF projects), or 40 CFR §35.3580 (for DWSRF projects). Where there are differences between the Hawaii Statutes/Rules and the USEPA statutes and regulations, the Project must comply with the USEPA statutes and regulations in order to qualify for the SRF program's loan.

☐ The County has prepared an EA of a Finding of No Significant Impact (FONSI) or mitigated FONSI in accordance with Chapter 343 of the HRS and Section 11-200 of the HAR, and 40 CFR §35.3140(b)(3)(i) (for CWSRF projects), or 40 CFR §35.3580(c)(3)(i) (for DWSRF projects). Where there are differences between the Hawaii Statutes/Rules and the USEPA statues and regulations, the Project must comply with the USEPA statutes and regulations in order to qualify for the SRF Program's loan. The County recommends that the Department of Health (DOH) approve the EA FONSI or mitigated FONSI.

☐ The County recommends that the project qualifies for a reaffirmation or modification of a decision contained in a previously issued exemption, or EA/FONSI or mitigated FONSI in accordance with 40 CFR §35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(iii) (for DWSRF projects).

TO BE FILLED OUT BY THE SRF PROGRAM:

☐ DOH has conducted a review of the proposed project for the County in accordance with 40 CFR §35.3140 (for CWSRF projects) or 40 CFR §35.3580 (for DWSRF projects); and HRS, Chapter 343; and Chapter 11-200, HAR. The DOH has determined that this project is eligible for an Exemption. Accordingly, the project is exempt from further substantive environmental review requirements under the above stated authorities.

☐ DOH concurs with the County's recommendation and approves the EA/FONSI or mitigated FONSI, in accordance with 40 CFR §35.3140(b)(3)(i) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(i) for (DWSRF projects); and HAR, Chapter 11-200, based on the information provided by the County. However, this decision may be reconsidered if a discovery of new information concerning potential environmental impacts of the project occurs.

☐ DOH concurs with the County's recommendation and approves the reaffirmation or modification of the previously issued exemption, or reaffirmation or modification of the previously issued EA/FONSI or mitigated FONSI, in accordance with 40 CFR §35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(iii) (for DWSRF projects), based on the information provided by the County. However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

☐ DOH does not concur or approve *(fill in type of action and briefly explain reasons)*.

DOH Reviewer: _____ Date: _____

Hawaii Department of Health
State Revolving Fund Program
Environmental Impact Statement (EIS) Review Checklist

Check the box that applies to this submittal:

☐ CWSRF Project ☐ DWSRF Project

Check the box that applies to this submittal:

☐ Environmental Impact Statement (EIS) ☐ EIS/Record Of Decision (ROD) Reaffirmation

APPLICANT INFORMATION	
Applicant:	
Contact Person:	Contact Phone:
Project Name:	Project No:
Project Description:	

For sections A-C below, check applicable "Yes", "No", or "N/A" box next to the given statements.

A. DOCUMENT SUBMITTAL & PUBLIC NOTICE	YES	NO	N/A	DOH REVIEW / CONCURRENCE
Environmental Document Title: *(Fill in)* Environmental Documents submitted: *(Fill in)*				
If a prior-decision document submitted, is it less than 5 years old?				
If no, has the prior decision document been reaffirmed?				
Have public notice requirements been met?				
Have public meeting requirements been met?				
Have response to public comment requirements been met?				

B. SERP CRITERIA ADDRESSED	YES	NO	N/A	DOH REVIEW / CONCURRENCE
1. Identification of applicant				
2. Identification of approving agency				
3. All agencies consulted				
4. Detailed Project Description (maps, technical data, economic and cultural effects and historical perspective)				
5. Analysis of alternatives including the no action alternative and explanation why alternatives were rejected				
6. Description of environmental setting/affected environment				
7. Statement of the relationship of the proposed action to land use plans, policies and controls for the affected area				
8. Description of the probable impacts of the project including direct, indirect and cumulative impacts, also impacts on natural and human environments				
9. Description of the relationship between short-term uses of environmental resources and long-term productivity (sustainable analysis)				
10. Statement of the unavoidable environmental impacts caused by the project and a rationale for proceeding with the project in light of these impacts				
11. Consideration of all mitigation measures proposed to avoid, minimize, rectify, or reduce the project's adverse impacts				
12. A summary of unresolved issues and a discussion of how issues will be resolved				
13. Substantive comments received during the study process and responses to comments				
14. A summary of any coordination or consultation undertaken with any federal, state, or local government				
15. A summary of persons commenting on the draft EIS				
16. Applicant's responses to comments received				
17. Names of the persons primarily responsible for preparing the EIS				
18. Applicant prepared and issued a ROD				
19. ROD contains the decision to proceed or not to proceed with the project				

B. SERP CRITERIA ADDRESSED	YES	NO	N/A	DOH REVIEW / CONCURRENCE
20. ROD includes any commitments to mitigation, an explanation if the environmental preferred alternative was not selected				

C. CROSS-CUTTERS ADDRESSED:	YES	NO	N/A	DOH REVIEW / CONCURRENCE	U.S. EPA REVIEW / CONCURRENCE (when req'd)
1. Archeological and Historical Preservation Act (16 U.S.C. § 469a-1)					
2. Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c)					
3. Clean Air Act (42 U.S.C. § 7401)					
4. Coastal Barriers Resource Act (16 U.S.C. § 3501)					
5. Coastal Zone Management Act (16 U.S.C. § 1451)					
6. Endangered Species Act (16 U.S.C. § 1531)					
7. Environmental Justice (Executive Order 12898)					
8. Farmland Protection Policy Act (7 U.S.C. § 4201)					
9. Fish and Wildlife Coordination Act (16 U.S.C. § 661)					
10. Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)					
11. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq*.)					
12. Marine Mammal Protection Act (16 U.S.C. §§ 703 *et seq.)*					
13. Migratory Bird Treaty Act (16 U.S.C. §§703 *et seq*.)					
14. National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq*.)					
15. Protection of Wetlands (Executive Order 11990 (1977), as amended by Executive Order 12608 (1997))					
16. Rivers and Harbors Act (33 U.S.C. § 403)					

C. CROSS-CUTTERS ADDRESSED:	YES	NO	N/A	DOH REVIEW / CONCURRENCE	U.S. EPA REVIEW/ CONCURRENCE (when req'd)
17. Safe Drinking Water Act (42 U.S.C. § 300f)					
18. Wild and Scenic Rivers Act (16 U.S.C. § 1271)					

PLEASE CHECK THE BOX THAT APPLIES TO THE PROJECT:

☐ The County has prepared a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) in accordance with Chapter 343 of the Hawaii Revised Statutes (HRS) and Chapter 11-200 of the Hawaii Administrative Rules (HAR), and 40 CFR §35.3140(b)(3)(ii) (for CWSRF projects), or 40 CFR §35.3580(c)(3)(ii) (for DWSRF projects). Where there are differences between the Hawaii Statutes/Rules and the USEPA statutes and regulations that affect a Project, the Project must comply with the USEPA statutes and regulations in order to qualify for the SRF Program's loan. The County recommends that the Department of Health (DOH) approve the FEIS and ROD.

☐ The County recommends that the project qualifies for a reaffirmation or modification of a decision contained in a previously issued FEIS/ROD in accordance with 40 CFR §35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(iii) (for DWSRF projects).

TO BE FILLED OUT BY THE SRF PROGRAM:

☐ DOH concurs with the County's recommendation and approves the determination of the FEIS/ROD in accordance with 40 CFR §35.3140(b)(3)(ii) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(ii) (for DWSRF projects); and Chapter 343, HRS and HAR, Chapter 11-200, HAR based on the information provided by the County. However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

☐ DOH concurs with the County's recommendation and approves the reaffirmation or modification of the previously issued FEIS/ROD in accordance with 40 CFR §35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR §35.3580(c)(3)(iii) (for DWSRF projects) based on the information provided by the County. However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

☐ DOH does not concur or approve *(fill in type of action and briefly explain reasons)*.

DOH Reviewer: _____ Date: _____

PUBLIC NOTICE
HAWAII DEPARTMENT OF HEALTH
STATE REVOLVING FUND (SRF) LOAN PROGRAM
EXEMPT PROJECT DETERMINATION
FOR
(SRF PROJECT NAME)
(SRF PROJECT NUMBER)
COUNTY OF _____

DOCKET NO. ##-*WW-SRF-*## or ##-*SDW-SRF-*##

The Hawaii Department of Health (DOH) has conducted a review of the proposed project for the County of _____ in accordance with Hawaii's State Environmental Review Process, Chapter 343 of the Hawaii Revised Statues, Chapter 11-200 of the Hawaii Administrative Rules, and 40 CFR §35.3140 (for CWSRF projects), or 40 CFR §35.3580 (for DWSRF projects).

Project Description:

(describe project)

DOH has determined that this project is eligible for an Exemption because *(insert brief description, e.g., this project involves minor alternations in the existing foot print of the facility.)* Accordingly, the project is exempt from further substantive environmental review requirements under the above stated authorities.

The documentation to support this decision will be on file at the DOH, Environmental Management Division, in Pearl City, Hawaii, and is available for public review upon request.

This notice is hereby given on this ____ day of _____, 20__, by authorization of Virginia Pressler, M.D., Director of Health.

PUBLIC NOTICE
HAWAII DEPARTMENT OF HEALTH
STATE REVOLVING FUND (SRF) LOAN PROGRAM
FINAL ENVIRONMENTAL ASSESSMENT WITH FINDING OF NO SIGNIFICANT IMPACT OR MITIGATED FINDING OF NO SIGNIFICANT IMPACT
FOR
(SRF PROJECT NAME)
(SRF PROJECT NUMBER)
COUNTY OF _____

DOCKET NO. ##-WW-SRF-## or ##-SDW-SRF-##

The County of _____ prepared a Final Environmental Assessment (FEA) Determination of a Finding of No Significant Impact (FONSI) or mitigated FONSI on *(insert date)* for the above proposed project.

Project Description:

(describe project)

A public comment period was held from *(insert date)* to *(insert date)* and there were *(insert number)* comments received and addressed.

Based on the information and recommendation that was provided by the County, the State of Hawaii, Department of Health (DOH) concurs with the County's recommendation and approves the FEA/FONSI or mitigated FONSI, in accordance with Chapter 343 of the Hawaii Revised Statues, Chapter 11-200 of the Hawaii Administrative Rules, 40 CFR §35.3140(b)(3)(i) (for CWSRF projects), or 40 CFR §35.3580(c)(3)(i) (for DWSRF projects). However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

The documentation to support this decision will be on file at the DOH, Environmental Management Division, in Pearl City, Hawaii, and is available for public review upon request.

This notice is hereby given on this ____ day of _____, 20__, by authorization of Virginia Pressler, M.D., Director of Health.

PUBLIC NOTICE
HAWAII DEPARTMENT OF HEALTH
REVOLVING FUND LOAN PROGRAM
REAFFIRMATION OR MODIFICATION OF A PREVIOUSLY ISSUED EXEMPTION, ENVIRONMENTAL ASSESSMENT (EA)/FINDING OF NO SIGNIFICANT IMPACT (FONSI) OR MITIGATED FONSI
FOR
(SRF PROJECT NAME)
(SRF PROJECT NUMBER)
COUNTY OF _____

DOCKET NO. *##-WW-SRF-##* or *##-SDW-SRF-##*

The County of _____ has provided the Hawaii Department of Health (DOH) with a reaffirmation **OR** modification of a decision contained in an exemption, EA/FONSI or mitigated FONSI that was originally issued on (*insert date*) for the above proposed project. The County recommends that the project qualifies for a reaffirmation OR modification of the previously issued exemption, EA/FONSI or mitigated FONSI in accordance with 40 CFR 35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR 35.3580(c)(3)(iii) (for DWSRF projects).

Project Description:

(describe project)

DOH concurs with the County's recommendation and approves the reaffirmation OR modification of the previously issued exemption, OR reaffirmation or modification of the previously issued EA/FONSI or mitigated FONSI, in accordance with 40 CFR 35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR 35.3580(c)(3)(iii) (for DWSRF projects), based on the information provided by the County. However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

The documentation to support this decision will be on file at the DOH, Environmental Management Division, in Pearl City, Hawaii, and is available for public review upon request.

This notice is hereby given on this ____ day of _____, 20__, by authorization of Virginia Pressler, M.D., Director of Health.

PUBLIC NOTICE
HAWAII DEPARTMENT OF HEALTH
REVOLVING FUND LOAN PROGRAM
ENVIRONMENTAL IMPACT STATEMENT WITH RECORD OF DECISION
FOR
(SRF PROJECT NAME)
(SRF PROJECT NUMBER)
COUNTY OF _____

DOCKET NO. ##-*WW-SRF-*## or ##-*SDW-SRF-*##

The County of _____ prepared a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) on *(insert date)* for the above proposed project.

Project Description:

(describe project)

A public comment period was held from *(insert date)* to *(insert date)* and there were *(insert number)* comments received and addressed. A public hearing or meeting was held on *(insert date)*.

Based on the information and recommendation that was provided by the County, the State of Hawaii, Department of Health (DOH) concurs with the County's recommendation and approves the determination of the FEIS/ROD, in accordance with Chapter 343 of the Hawaii Revised Statues, Chapter 11-200 of the Hawaii Administrative Rules, 40 CFR §35.3140(b)(3)(ii) (for CWSRF projects), or 40 CFR §35.3580(c)(3)(ii) (for DWSRF projects). However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

The documentation to support this decision will be on file at the DOH, Environmental Management Division, in Pearl City, Hawaii, and is available for public review upon request.

This notice is hereby given on this ____ day of _____, 20__, by authorization of Virginia Pressler, M.D., Director of Health.

PUBLIC NOTICE
HAWAII DEPARTMENT OF HEALTH
REVOLVING FUND LOAN PROGRAM
REAFFIRMATION OR MODIFICATION OF A PREVIOUSLY ISSUED FINAL ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION (FEIS/ROD)
FOR
(SRF PROJECT NAME)
(SRF PROJECT NUMBER)
COUNTY OF _____

DOCKET NO. *##-WW-SRF-##* or *##-SDW-SRF-##*

The County of _____ has provided the Hawaii Department of Health (DOH) with a reaffirmation **OR** modification of a decision contained in the FEIS/ROD that was originally issued on *(insert date)* for the above proposed project. The County recommends that the project qualifies for a reaffirmation **OR** modification of the previously issued FEIS/ROD in accordance with 40 CFR 35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR 35.3580(c)(3)(iii) (for DWSRF projects).

Project Description:

(describe project)

DOH concurs with the County's recommendation and approves the reaffirmation OR modification of the previously issued FEIS/ROD, in accordance with 40 CFR 35.3140(b)(3)(iii) (for CWSRF projects) or 40 CFR 35.3580(c)(3)(iii) (for DWSRF projects), based on the information provided by the County. However, this decision may be reconsidered if a discovery of information concerning potential environmental impacts of the project occurs.

The documentation to support this decision will be on file at the DOH, Environmental Management Division, in Pearl City, Hawaii, and is available for public review upon request.

This notice is hereby given on this ____ day of _____, 20__, by authorization of Virginia Pressler, M.D., Director of Health.

ATTACHMENT 4A – ENVIRONMENTAL CROSS-CUTTERS

Environmental Authorities	Procedure	Responsible Agency
ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 U.S.C. 16 U.S.C. § 469a-1	Obtain review for all projects.	State Historic Preservation Office Native Hawaiian Organizations, and U.S. Environmental Protection Agency in certain cases
Bald and Golden Eagle Protection Act, 16 U.S.C. §§668-668c	Permit required for taking eagles.	U.S. Department of the Interior
CLEAN AIR ACT, 42 U.S.C. 7506(c)	Coordinate to assure project conforms with State Implementation Plan (SIP).	State Department of Health, Clean Air Branch
COASTAL BARRIER RESOURCES ACT, 16 U.S.C. §§3501-3510	Obtain review if project is located on a coastal barrier island.	State Coastal Zone Management Agency
COASTAL ZONE MANAGEMENT ACT OF 1972, 16 U.S.C.§§ 1451-1464	Obtain review if project is located in coastal zone.	State Coastal Zone Management Agency
ENDANGERED SPECIES ACT 16 U.S.C.§§ 1531-1543	Obtain review by U.S. Fish and Wildlife Service and/or National Marine Fisheries Service for all projects.	U.S. Fish and Wildlife Service and/or National Marine Fisheries Service, and U.S. Environmental Protection Agency in certain cases
ENVIRONMENTAL JUSTICE, EXECUTIVE ORDER 12898	Identify and address the disproportionately high and adverse human health or environmental effects of project on minority or low-income populations.	U.S. Environmental Protection Agency
FARMLAND PROTECTION POLICY ACT, 7 U.S.C.§§ 4201-4209	Obtain review if project area contains prime farmland.	U.S. Department of Agriculture
FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C.§§ 661-664	Obtain review for all projects.	U.S. Fish and Wildlife Service
FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988 as amended by EXECUTIVE ORDERS 12148 and 13690	Obtain review if project is located in or affects 100-year flood plain.	Federal Emergency Management Agency
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT, 16 U.S.C. §§ 1801 *et seq.*	Obtain review if project is located in area with Wild and Scenic Rivers.	National Marine Fisheries Service and U.S. Environmental Protection Agency in certain cases
Marine Mammal Protection Act, 16 U.S.C. §§1361 *et seq*.	Permit required for taking of marine mammals.	U.S. Fish and Wildlife Service and National Marine Fisheries Service
MIGRATORY BIRD TREATY ACT, 16 U.S.C. §§703 *et seq.*	Obtain review if project impacts breeding bird species.	U.S. Fish and Wildlife Service
NATIONAL HISTORIC PRESERVATION ACT OF 1966, 54 U.S.C. §§300101 *et seq*.	Obtain review for all projects.	State Historic Preservation Office Native Hawaiian Organizations
PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990, as amended by EXECUTIVE ORDER 12608	Obtain review if project area contains wetlands.	U.S. Army Corps of Engineers
RIVERS AND HARBORS ACT, 33 U.S.C. § 403	Obtain review if project requires construction of any structure in or over a navigable water of the U.S. or if structure or work will affect the course, location, or condition of a water body.	U.S. Army Corps of Engineers
SAFE DRINKING WATER ACT, 42 U.S.C.§§ 300f-300j-9	Obtain review if project could affect sole source aquifer.	State Department of Health, Safe Drinking Water Branch, U.S. Environmental Protection Agency
WILD AND SCENIC RIVERS ACT, 16 U.S.C.§§ 1271 *et. seq*.	Obtain review if project is located in area with Wild and Scenic Rivers.	National Park Service, U.S. Forest Service, Bureau of Land Management

ENVIRONMENTAL CROSS-CUTTERS – ATTACHMENT 4B

Federal Cross-Cutting Authorities Environmental Review[1]
Numerous federal environmental laws and Executive Orders may apply to projects funded under the CWSRF and DWSRF which are referred to as the Federal Cross-Cutting authorities.

- **Archaeological and Historic Preservation Act**

The Archaeological and Historic Preservation Act (AHPA) provides for the preservation of significant scientific, prehistoric, historic and archaeological materials and data that might be lost or destroyed as a result of flooding, the construction of access roads, relocation of railroads and highways, or any other federally funded activity that is associated with the construction of a dam or reservoir (54 U.S.C. §§312501-312508). Under this law, historical and archaeological resources do not have to be eligible, or considered eligible, in the National Register of Historic Properties for an impact to occur. If a project will have an adverse effect on historical or archaeological resources or data, the USEPA will notify the Secretary of the Interior in writing. The Secretary then has 60 days after the notification to initiate a survey or recovery effort. The Secretary will notify the USEPA of the progress of any surveys or data recovery being conducted for the project. The USEPA will transmit this information to the State.

The USEPA retains the responsibility for compliance with the AHPA requirements. The State will coordinate with USEPA to complete the consultation with the National Park Service where appropriate.

- **Bald and Golden Eagle Protection Act**

The Bald and Golden Eagle Protection Act (16 U.S.C. §§668-668c), prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." "Disturb" means: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death, or next abandonment.

[1] This SERP only addresses the Environmental cross-cutting authorities. It does not include the Social Policy and Economic federal cross-cutting authorities. For more information on the Social Policy and Economic cross-cutting authorities see: https://www.USEPA.gov/sites/production/files/2015-08/documents/crosscutterhandbook.pdf

- **Clean Air Act**

The Clean Air Act (CAA) directs the USEPA to set ambient air quality standards, which are airborne pollutant levels that are sufficient to protect public health and welfare. Each state develops its own State Implementation Plan (SIP) describing how it will maintain, enforce, and attain the National Ambient Air Quality Standards (NAAQS). Section 176(c) of the Clean Air Act (42 U.S.C. §7506(c)) requires that federal projects conform to the purpose of the SIP, meaning that federal activities will not cause new violations of NAAQS, increase the frequency or severity of NAAQS violations, or delay timely attainment of the NAAQS or any interim milestone. Section 176(c) therefore prohibits federal assistance for an activity within a nonattainment or maintenance area that fails to conform to an applicable SIP.

The USEPA's regulations at 40 C.F.R. § 93.158 *et seq*. - *Determining Conformity of General Federal Actions to State or Federal Implementation Plans* govern its implementation of Section 176(c) of the Clean Air Act. A general conformity analysis applies to projects in a nonattainment area or an attainment area subject to a maintenance plan ("maintenance area") and is required for each federal criteria pollutant for which an area has been designated nonattainment or maintenance.

If the project consists of an activity listed as exempt, no general conformity analysis is needed because the project is presumed to conform to the Clean Air Act requirements (40 C.F.R. § 93.153 [c][2]). Generally, the types of projects that receive CWSRF financing do not appear on the rule's exempt activity list. The applicant must explain how the exemption applies to the project if one is claimed. Rehabilitation projects are not considered routine maintenance and rUSEPAir projects are not exempt from a general conformity determination.

If the project is not exempt from a general conformity determination, the applicant shall follow the steps below:

i. The applicant must determine if the project is in a nonattainment or maintenance area for federal criteria pollutants. Information on where nonattainment and maintenance areas are located can be found on the USEPA's Green Book website (http://www3.USEPA.gov/airquality/greenbook). If the project is located in an air basin that is in an attainment area not under a maintenance plan, or in an unclassified area, for all federal criteria pollutants, then the project is not subject to a general conformity determination and no further analysis is necessary.

ii. If the project is in a nonattainment or maintenance area, the applicant must calculate the direct and indirect project construction and operational emissions, in tons per year, for each federal criteria pollutant that is in nonattainment or maintenance. The USEPA has established NAAQS for six criteria pollutants including ground-level ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. Note that for ozone, the applicant will need to calculate the precursors to ozone.

iii. If a project's total estimated emissions (construction and operation) for each nonattainment or maintenance criteria pollutant are below the federal *de minimis* thresholds ("nonattainment rates") as set forth in the applicable regulation (40 C.F.R. § 93.153), then no general conformity determination is necessary, and the State can conclude that the project conforms to the SIP. *De minimis* levels for each criteria pollutant

are defined by their designations (i.e. serious, severe or extreme). Further information on *de minimis* levels can be found at: https://www.USEPA.gov/general-conformity/de-minimis-emission-levels.

iv. If a project's total estimated emissions (construction and operation) for a nonattainment or maintenance criteria pollutant are above the applicable *de minimis* threshold and the project is not otherwise exempt from a conformity determination, then a general conformity determination **is** required.

- The applicant shall provide to the USEPA the information set forth in 40 C.F.R. § 93.158 requirements for making a general conformity determination.
- If estimated emissions are above the federal *de minimis* threshold ("nonattainment rates") or are greater than ten percent (10%) of the air basin's emissions inventory, but the project is sized to meet only the needs of current population projections that are used in the approved SIP, then the applicant must quantitatively indicate how the proposed capacity increase was calculated using population projections. With this information, the USEPA will be able to make a positive general conformity determination for project emissions for these criteria pollutants under this specific criterion provided in the rule (See 40 C.F.R. § 93.1544). The project must be found to conform to the approved SIP to receive CWSRF or DWSRF funding approval.

The USEPA maintains a General Conformity website at: https://www.USEPA.gov/general-conformity, and https://www.USEPA.gov/general-conformity/what-general-conformity.

- **Coastal Barriers Resources Act**

The Coastal Barriers Resources Act is intended to discourage development in the Coastal Barrier Resources System and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. Should the applicant believe there may be impacts to the Coastal Barrier Resources System due to special circumstances, they should use the following information as a guide:

During the planning process, the applicant should consult with the appropriate Coastal Zone management agency (e.g., City or County with an approved Local Coastal Program) to determine if the project will have an effect on the Coastal Barrier Resources System. If the project will have an effect on the Coastal Barrier Resources System, the State must consult with the appropriate Coastal Zone management agency and the USFWS. Any recommendations from the Coastal Zone management agency and the USFWS will be incorporated into the project design prior to funding approval.

To help ensure that the applicant complies with the Costal Barriers Resource Act, it should visit http://www.fws.gov/CBRA/ for more information on the legal requirements and to confirm that no modifications to Coastal Barrier Resources System units have occurred.

- **Coastal Zone Management Act**

The Coastal Zone Management Act requires all federal agencies to ensure that activities in coastal areas are consistent with approved state Coastal Zone management plans. Before any federally supported project is implemented in a Coastal Zone, a determination that the project is consistent with the Coastal Zone management plan must be made. The applicant should consult directly with the state Coastal Zone management agency (City or County with an approved Local Coastal Program) to determine if the project is consistent with the Coastal Zone

management plan. Consistency may be achieved by appropriate siting of the project and any components, or by incorporating mitigation measures from the state Coastal Zone management agency into the project design. The applicant must provide documentation to the State that the project is not in a Coastal Zone or is consistent with the state Coastal Zone management plan.

To help ensure that the applicant complies with the Coastal Zone Management Act, it should visit the following website to obtain more detailed information regarding legal requirements: https://coast.noaa.gov/czm/media/StateCZBoundaries.pdf for affected areas.

- **Endangered Species Act (ESA), Section 7**

The State must ensure that CWSRF and DWSRF projects are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify their critical habitat. The USEPA has designated the State (DOH) as its non-federal representative for conducting informal consultations with the USFWS and the NMFS (see Attachments 5A and 5B, respectively). The State will coordinate with the USEPA to conduct informal and formal consultation with the USFWS and the NMFS if necessary. Any issues raised by those agencies must be resolved prior to funding approval by the State.

The applicant must obtain, in written form, current species lists from the USFWS and the NMFS, of any listed or proposed species and any designated or proposed critical habitat that may be present in the project action area. If any listed or proposed species or designated or proposed critical habitat may be present in the project area, the applicant should contact the appropriate USFWS and/or NMFS regional office to help determine whether the project may affect any of the species or habitat. The applicant will identify to the State any listed or proposed species and describe the potential effects of the project on such species.

A "may affect" finding is the appropriate conclusion when a proposed action may result in any effects on listed species or designated critical habitat. "Effects of the action refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline." *See* 50 C.F.R. § 402.02. "May affect" is a relatively low threshold that includes any possible effect, whether beneficial, benign, adverse, or of an undetermined character.

The following is a non-exhaustive list of factors to consider when analyzing potential direct and indirect effects of the proposed action:

a. Exposure
    - Proximity of the project action to the listed species
    - Distribution of species and habitat use
    - Timing, duration, magnitude, and nature of effects
b. Biology
    - Breeding, feeding, and sheltering
    - Sensitivity and resilience to change
    - Recovery rate

The concept of "take" is also important in an ESA consultation**. "**Take" is defined by the ESA to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. § 1532(19).)

The terms "harass" and "harm" are further defined as follows:

- "Harass" means an "intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering." (50 C.F.R. § 17.3.)
- "Harm" means "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering." (50 C.F.R. § 17.3.)

Identifying habitat modifications that harm individuals of a species involves understanding a species' life history.

Once the applicant has provided the relevant information to the State, the State, USEPA and USFWS and/or NMFS, in their respective roles, must make one of the following ESA determinations described below for each federally listed or proposed species or designated or proposed critical habitat:

i. ***No Effect*** determination occurs when there are no direct or indirect effects on any listed species or its designated critical habitat (not even a beneficial effect), pursuant to the standard set forth in 50 C.F.R. § 402.02. Examples of "no effect" determinations include when there is no overlap between the range of the listed and proposed species and the project area, the species' habitat does not occur in or adjacent to the project area, designated critical habitat does not occur in the project vicinity, or there is no chance the project will have an effect on the listed species or designated critical habitat.

   The State makes "no effect" determinations based upon the information submitted by the applicant and informal discussions with the USFWS and/or NMFS, and must provide written notification and a brief statement of the basis of "no effect" determinations to USEPA.

ii. ***May Affect, Not Likely to Adversely Affect*** **(NLAA)** determination occurs when impacts to a listed species or its designated critical habitat due to project actions are likely to be discountable, wholly beneficial, or insignificant, and never rise to the level of "*take*" (see definition above). Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

   The State will communicate with the USFWS and/or NMFS to ensure all biological documents to be used for informal consultation are complete and justify the recommended determination. A biological assessment is typically required for major construction activities. *See* 50 C.F.R. § 402.12(f). The applicant is encouraged to contact the State to discuss questions and to request an example biological assessment template.

Based upon its review of the biological documentation and upon its own decision regarding the appropriateness of an NLAA determination, the State will summarize the biological documentation in a written NLAA recommendation submitted to USEPA.

The USEPA makes all official NLAA determinations. To the extent that USEPA agrees with the State's NLAA recommendation, the USEPA will send a letter to the USFWS and/or NMFS making an official NLAA determination and seeking concurrence from the USFWS and/or NMFS on the NLAA determination.

Concurrence from USFWS and/or NMFS must be in writing. USFWS and/or NMFS may require project modifications and/or conservation measures to avoid adverse impacts. Any project modifications and/or conservation measures should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

iii. ***May Affect, Likely to Adversely Affect*** determination occurs when a listed species or its designated critical habitat may be adversely affected as a result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect on the proposed action is beneficial to the listed species, but also is likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species. **Formal consultation with the USFWS and/or NMFS is required for all "may affect, likely to adversely affect" determinations**.

In preparation for formal consultations, the State will request the applicant prepare a biological assessment. The State will communicate with the USFWS and/or NMFS to ensure the biological assessment is complete and justifies the proposed determination. A biological assessment may include the following elements:

- The results of an on-site inspection and focused protocol surveys of the project area to determine if species are present or occur seasonally.
- The views of recognized experts on the species at issue.
- A review of the literature and other information.
- An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
- An analysis of alternate actions considered.

Based upon its review of the biological documentation and upon its own decision regarding the appropriateness of a "may affect, likely to adversely affect" determination, the State will summarize the biological documentation in a written "may affect, likely to adversely affect" recommendation submitted to USEPA.

The USEPA makes all "may affect, likely to adversely affect" determinations. Upon making such a determination, the USEPA will send a letter to the USFWS and/or NMFS initiating formal consultation.

Formal consultation is concluded when the USFWS and/or NMFS issues a Biological Opinion. Formal consultation relies on more detailed descriptions, relevant studies, surveys, biological assessments, as set forth at 50 C.F.R. § 402.14(c), and involves up to 90 days of consultation, followed by 45 days for the USFWS and/or NMFS to produce the Biological Opinion. In the Biological Opinion, USFWS and/or NMFS often recommend

project modifications and/or reasonable and prudent conservation measures to avoid jeopardy. Any project modifications and/or conservation measures should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

iv. ***May Affect, Likely to Adversely Affect*** determination on species proposed for listing or on habitat proposed as critical habitat requires a conference with the USFWS and/or NMFS. Upon a determination by ESPA that a proposed project may have an adverse effect on species proposed for listing or on habitat proposed as critical habitat, USEPA will initiate a conference with the USFWS and/or NMFS pursuant to Section 7(a)(4) of the ESA to determine the appropriate course of action.

If the project involves resources that are protected by a Habitat Conservation Plan (HCP), the applicant must provide the State with supporting evidence regarding whether the proposed project impacts will be consistent with the HCP requirements (16 U.S.C. § 1539(a)(2)(A)).

In order to meet the requirements of the ESA described above, as well as the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, DOH will comply with the following procedures:

i. ***No Effect*** (DOH makes determination):
   a. DOH will
      i. Collect and review appropriate information, make determination, and document the determination.
      ii. Provide documentation of the No Effect determination in an email to the USEPA project officer.
   b. The USEPA will maintain a copy of the No Effect determination documentation.

ii. ***May Affect, Not Likely to Adversely Affect*** **(NLAA)** listed species or its designated critical habitat (USEPA makes determination after DOH conducts informal consultation with the Service(s)):
   a. DOH will
      i. Collect and review appropriate information, engage Service(s) in an early consultation, and document the consultation effort with the Service(s).
      ii. Coordinate with the applicant and the Service(s) and resolve any issues.
      iii. Conduct informal discussions with the Service(s).
      iv. Request assistance from USEPA in resolving any issues raised by the Service(s).
      v. Send USEPA a NLAA recommendation, along with copy of all relevant informal consultation documents (e.g. biological assessment/report evaluation, species list, mitigation/conservation measures, records of communications, etc.).
   b. The USEPA will
      i. Assist DOH as needed.
      ii. To the extent USEPA agrees with the DOH's NLAA recommendation, send a NLAA determination letter to the Service(s) (copy DOH) seeking concurrence.

DOH will not execute a financing agreement for a CWSRF or DWSRF project until it has received concurrence on a NLAA determination from the Service(s).

iii. ***Formal Consultation*** where the proposed project is likely to adversely affect species or critical habitat, USEPA will initiate formal consultation under Section 7 (USEPA makes determination):
   a. DOH will
      i. Collect and review appropriate information and engage Service(s) prior to the initiation of formal consultation.
      ii. Request assistance from USEPA, as needed.
      iii. Send USEPA a letter requesting initiation of formal consultation, providing all relevant information and documents necessary for the consultation, including the Biological Assessment or Biological Evaluation.
      iv. Assist USEPA in resolving any issues raised by the Service(s) regarding the formal consultation.
   b. The USEPA will
      i. Communicate with, and facilitate communication among, DOH and the Service(s), as needed.
      ii. Send a letter to the Service(s) (copy DOH) requesting formal consultation, enclosing the letter and other relevant information and documents from DOH.
      iii. Provide any draft Biological Opinions received from the Service(s) to the DOH and consider any comments from DOH.
      iv. Work with the Service(s) and the DOH until any issues are resolved and formal consultation is completed.

   DOH will not execute a financing agreement for a CWSRF or DWSRF project until formal consultation is complete. Formal consultation usually is completed with the issuance of a final Biological Opinion from the Service(s).

iv. ***Likely to Jeopardize Proposed Species/Adversely Modify Proposed Critical Habitat*** (USEPA makes determination):
   a. DOH will provide assistance to USEPA as requested.
   b. The USEPA will request a conference with the proposing Service(s).

The applicant is encouraged to visit http://www.fws.gov/endangered/laws-policies/index.html and http://www.nmfs.noaa.gov/pr/laws/esa for further information on the federal ESA.

- **Environmental Justice – Executive Order No. 12898**

The applicant must identify and address any disproportionately high and adverse human health or environmental effects of the project activities on minority, low-income, indigenous populations, or tribes. The USEPA has defined environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The applicant is encouraged to review the USEPA's *Final Guidance for Incorporating Environmental Justice Concerns in USEPA's NUSEPA Compliance Analyses* (https://www.USEPA.gov/sites/production/files/2015-04/documents/ej-guidance-nUSEPA-compliance-analyses.pdf) as an aid in meeting the objectives of the Executive Order.

Fair Treatment means that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative consequences of industrial, governmental, and commercial operations or programs and policies.

Meaningful Involvement means that: 1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; 2) the public's contribution can influence the agency's decision; 3) the concerns of all participants involved will be considered in the decision-making process; and 4) the decision-makers seek out and facilitate the involvement of those potentially affected.

The term "environmental justice concern" is used to indicate the actual or potential lack of fair treatment or meaningful involvement of minority, low-income, or indigenous populations, or tribes in the development, implementation, and enforcement of environmental laws, regulations, and policies.

A project may involve an "environmental justice concern" if the project could:

a) Create new disproportionate impacts on minority, low-income, or indigenous populations;
b) Exacerbate existing disproportionate impacts on minority, low-income, or indigenous populations; or
c) Present opportunities to address existing disproportionate impacts on minority, low-income, or indigenous populations that are addressable through the project.

- **Farmland Protection Policy Act**

The Farmland Protection Policy Act requires identification of potential adverse effects on farmland and its conversion to nonagricultural uses, mitigation of these effects, and assurance that projects are carried out in a manner compatible with the farmland preservation policies of state and local governments and of private organizations.

Early in the project planning process, the applicant should seek assistance from the state conservationist or local representative regarding the alternative project locations. The state conservationist can provide advice on: (a) what further actions must be taken by the applicant to further evaluate important farmlands, (b) the significance of all identified important farmlands, (c) the sizing of the project as it relates to secondary growth, (d) the continued viability of farming and farm support services in the project area, and (e) alternatives or mitigation measures for reducing potential adverse effects on important farmlands.

The Natural Resources Conservation Service provides information on the Farmland Protection Policy Act at: http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/.

- **Fish and Wildlife Coordination Act**

Pursuant to 16 U.S.C. §662(a) of the FWCA, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any dUSEPArtment or agency of the United States, or by any public or private agency under Federal permit or license, such dUSEPArtment or agency first shall consult with the USFWS, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

The provisions of Section 662(a) do not apply to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

As this law was established before the ESA and the Clean Water Act, the affected water bodies do not have to be a "Water of the U.S." or considered critical habitat for a federally listed species to trigger actions required under the FWCA. Reports and recommendations from the wildlife and/or fisheries agencies can be submitted to the action agency. Reports and recommendations received must accompany project reports for authorization or approval and are not legally binding but should be strongly considered.

Should consultation under the FWCA be required, the State will provide information about the project to the USEPA and will work with the USEPA to initiate the consultation process.

- **Floodplain Management – Executive Order No. 11988, as amended by Executive Order No. 12148, and Executive Order No. 13690**

The applicant must take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, and to restore and preserve the natural and beneficial values served by floodplains. The applicants must determine if the project will occur in or affect a floodplain. Floodplain locations can be determined by examining maps available from the United States DUSEPArtment of Housing and Urban Development, the United States DUSEPArtment of Homeland Security, Federal Emergency Management Agency (FEMA), and the United States DUSEPArtment of Agriculture. The applicant must select, if feasible, viable project alternative locations that will not adversely affect floodplains.

To determine if a project is located in a floodplain, the applicant should use the best-available information and the FEMA's effective Flood Insurance Rate Map. If the project will occur in a floodplain because no practicable alternative location is available, then measures must be taken to minimize the risk of flood damage to or within the floodplain, such as flood proofing the facility to be constructed, elevating structures above base flood levels, or providing compensatory flood storage. A public review is required for each plan or proposal for an action taking place in a floodplain.

If the project will be located in or will affect a floodplain, the applicant must prepare a floodplain/wetlands assessment. If there are no practicable alternatives to the proposed location, the applicant must document the mitigation measures or design modifications that will be incorporated into the project to reduce any flooding threats. The applicant must inform the community located in the project area why the project is to be located in a floodplain.

All documentation describing mitigation and design measures must be submitted to the State. If the applicant has not consulted with the local flood protection agency and/or FEMA, the State will notify FEMA to seek comments. FEMA may have additional measures to enhance flood protection.

For further information, the applicant is encouraged to go to: https://www.fema.gov/floodplain-management

- **Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) is designed to enable the management and conservation of national fishery resources. Essential Fish Habitat (EFH) consultations under the Magnuson-Stevens Act are required only for actions that may adversely affect an EFH. With assistance from the State, the applicant must ascertain whether the proposed project may adversely affect an EFH. The National Marine Fisheries Service maintains maps and/or other information on the locations of EFH, and provides information on ways to promote conservation of the EFH to facilitate this assessment. The applicant must complete an EFH assessment if the project may adversely affect EFH.

50 CFR §600.920(c) provides that a federal agency can designate a non-federal representative to conduct consultations on EFH required under the Magnuson-Stevens Act. The USEPA designated the State as its non-federal representative for purposes of EHF consultations with NMFS (Attachment 5B) if a project may adversely affect EFH.

Depending upon the circumstances, the State initiate consultations with the NMFS on EFH as part of an ESA consultation on the project. Alternatively, after discussions with NMFS and USEPA, and with USEPA's agreement, the State may utilize one of the other consultation approaches outlined in 50 CFR §600.920.

USEPA ultimately remains responsible for compliance with the Magnuson-Stevens Act. Any project modifications and/or conservation measures identified by NMFS should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing. For information regarding procedures that DOH will follow to comply with the Magnuson-Stevens Act, please refer to the ESA procedures in the ESA section above.

For more information on EFH, see:
http://www.nmfs.noaa.gov/sfa/reg_svcs/Council%20stuff/council%20orientation/2007/2007TrainingCD/TabT-EFH/EFH_CH_Handout_Final_3107.pdf

- **Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA), 16 U.S.C. §§1361 *et seq*., protects all marine mammals. It was the first legislation to mandate an ecosystem-based approach to marine resource management. The ecosystem approach has been incorporated in other U.S. statutes including the Magnuson–Stevens Fishery Conservation and Management Act, and in international agreements such as the Convention for the Conservation of Antarctic Marine Living Resources. The MMPA includes a general moratorium on the taking and importing of marine mammals. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. Jurisdiction for MMPA is shared by U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The U.S. Fish and Wildlife Service's Branch of Permits is responsible for issuing take permits when exceptions are made to MMPA.

Under the exception for incidental taking, the Fish and Wildlife Service or the National Marine Fisheries Service must find that the total taking over the five-year period will have a "negligible impact" and will not adversely affect the availability of the marine mammal species or stock for subsistence use by Alaskan natives.

- **Migratory Bird Treaty Act of 1918**

The Migratory Bird Treaty Act (MBTA) provides legal protection for almost all breeding bird species occurring in the United States. The MBTA restricts the killing, taking, collecting, selling, or purchasing of native bird species or their parts, nests, or eggs. The treaty allows hunting of certain game bird species, for specific periods, as determined by federal and state governments. The MBTA must be addressed in the environmental document.

If the environmental document includes mitigation measure(s), the State will coordinate with USEPA, and will notify the USFW, MBTA Office to seek comments.

For further information, the applicant is encouraged to go to: https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php.

- **National Historic Preservation Act (NHPA), Section 106**

Section 106 of the NHPA (Section 106) requires an analysis of the effects of proposed projects on "historic properties." The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official or officials and other parties with an interest in the effects of the undertaking on "historic properties." Consultation should commence during the early stages of project planning. "Historic properties" are properties that are included in or eligible for listing in the National Register of Historic Places. "Historic properties" include buildings, structures, objects, and archaeological sites 50 years or older.

On October 19, 2015, the USEPA notified the Hawaii State Historic Preservation Office (SHPO) and numerous Native Hawaiian Organization that it was designating DOH to act on USEPA's behalf when initiating the NHPA consultation process in connection with projects funded under the DWSRF. (Attachment 6A). However, USEPA will remain responsible for participating in the consultation process when: 1) DOH determines that the "Criteria of Adverse Effect" under 36 CFR §800.5 applies to an undertaking; 2) there is a disagreement between DOH and the SHPO or Native Hawaiian Organizations regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; 3) there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or 4) there is potential for a foreclosure situation or intentional adverse effects as described under 36 CFR §800.9 (b) and (c).

In addition, pursuant to the terms of the 1990 Programmatic Agreement on Historic Preservation for the CWSRF (Attachment 6B), the State shall carry out the requirements of federal regulation 36 CFR §§800.4 through 800.6, and other applicable sections of 36 CFR Part 800. The State shall seek concurrence for compliance with Section 106 of the NHPA and for cultural resources protected under the NHPA as applicable. USEPA will participate in the Section 106 process under the NHPA to the extent mutually agreed upon by the USEPA and the State, but at a minimum the USEPA must be notified by the State if, after routine consultation or coordination with the SHPO and NHOs, disputes remain.

The applicant is required to retain a consultant that meets the Secretary of the Interior's Professional Qualifications Standards to prepare a cultural resources report. The records search should be current. The applicant must identify the Area of Potential Effects (APE) to identify historic properties that may exist for the proposed project, including construction and

staging areas, and the length, width, and depth of any excavation on a map and in the text of the cultural resources report. The APE is three-dimensional and includes all areas that may be affected by the Project. The APE includes the entire surface area of the project and extends below ground to the total depth of any project excavations.

The State reviews Section 106 cultural resources reports/documents submitted by the applicant for adequacy and compliance with Section 106. Projects that the State determines to have "No historic properties affected"/ "No effect to historic properties"/ "No adverse effect to historic properties"/ "Adverse effect to historic properties" are submitted to SHPO from DOH for concurrence. Consultation with the SHPO by DOH will be used to develop and evaluate alternatives or modifications to the proposed project that could avoid, minimize or mitigate adverse effects on "historic properties." Any project modifications and/or mitigation measures identified by the applicant, State, SHPO and/or Native Hawaiian Organizations should typically be incorporated into and made enforceable in any approval of CWSRF or DWSRF financing.

The USEPA remains legally responsible for all determinations under the NHPA.

- **Protection of Wetlands – Executive Order No. 11990, as amended by Executive Order No. 12608**

Projects, regardless of funding, must receive approval for any temporary or permanent disturbance to federal and state waters, wetlands, and vernal pools. The CWA Section 404 permitting process is administered by the United States Army Corps of Engineers (USACE). This process can be lengthy and may ultimately require project alterations to avoid wetlands, vernal pools, and waters of the United States. The applicant must consult with the USACE early in the planning process if the project site contains wetlands, and other federal waters. The USACE Wetland Delineation Manual is available at: http://www.cpe.rutgers.edu/Wetlands/1987-Army-Corps-Wetlands-Delineation-Manual.pdf.

If the evaluation determines that there are no practicable alternatives that would avoid impacts to wetlands and waters of the United States, then the applicant shall design or modify the project to minimize adverse impacts to those resources and provide an opportunity for public review and comment on the project. Under the USACE "no net loss" policy, where natural wetlands will be destroyed by project construction, the applicant must devise plans to construct substitute or mitigation wetlands. Further, the applicant should seek assistance from the USFWS when developing measures to mitigate adverse impacts on wetlands to ensure that these measures adequately protect the diversity and habitat of species living in the affected wetland.

The applicant must obtain the CWA Section 404 permit from the USACE and the CWA Section 401 Water Quality Certification from DOH Clean Water Branch.

- **Rivers and Harbors Act, Section 10**

If a project requires the construction of any structure in or over a navigable water of the United States, action under Section 10 of the Rivers and Harbors Act, 33 U.S.C. §403, is triggered, regardless of whether the applicant is pursuing federal funding or not. Additionally, structures or work outside the defined area for a navigable water of the United States could also trigger the need for a Section 10 permit if the structure or work will affect the course, location, or condition of the water body. A Section 10 permit is issued by the Secretary of the Army through the

USACE. The applicant will initiate the process of obtaining a Section 10 permit itself and will supply a copy to the State. This process is similar to obtaining a CWA Section 404 permit discussed above.

- **Safe Drinking Water Act, 42 U.S.C. 300f *et seq*.**

Under this Act, Congress emphasized preventing contamination of aquifers that are the sole source of drinking water for a community under the Safe Drinking Water Act (SDWA). Section 1424 of the SDWA, 42 U.S.C. §300h-3, directs the USEPA, upon determining that a sole source aquifer may be at risk of contamination, to publish notice of that determination in the Federal Register. In accordance with Section 1424(e) of the SDWA, 42 U.S.C. §300h-3(e), after the notice is published:

> … no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator [of the USEPA] determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Before the State can approve SRF financing for a project, the applicant must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the applicant, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project.

If the project could potentially affect ground water supplies, the applicant, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures. In the latter case, the State will coordinate with the USEPA of the applicant's plans. If the USEPA requires additional mitigation measures, the State, with the assistance of the USEPA, will work with the applicant to integrate those measures into the project's design.

For the USEPA and state contacts, please go to:
https://www3.USEPA.gov/region9/water/groundwater/contacts.html.

For sole source aquifer locations, go to:
http://USEPA.gov/region09/water/groundwater/ssa.html.

- **Wild and Scenic Rivers Act**

Congress passed the Wild and Scenic Rivers Act to preserve the special scenic, cultural, historic, recreational, geologic, and fish and wildlife values of the nation's free flowing rivers and related adjacent land. The Wild and Scenic Rivers Act establishes requirements for projects that may affect a wild and scenic river, river segments, or the adjacent land.

During project planning, the applicant should consult with the appropriate federal agencies and the State to determine whether the project may affect a designated river. The appropriate agency to consult with is the one with jurisdiction over the rivers in the project area and includes the National Park Service, United States Forest Service, or Bureau of Land Management.

The federal cross-cutter requirements of the Wild and Scenic Rivers Act are satisfied if there are no designated rivers in the project area, or if the project will not have a direct and adverse effect on a designated river.

With help from the appropriate agencies and the State, the applicant must evaluate any alternatives under consideration that may affect a wild and scenic river. If those evaluations demonstrate that an alternative will have an adverse effect on a wild and scenic river, then that alternative must be eliminated from consideration and other alternatives or planning adjustments must be pursued.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 22, 2016

Dr. J. Frederick Caslick
Wildlife and Sport Fish Restoration Program Division Chief
U.S. Fish and Wildlife Service
Office of Migratory Birds & State Programs
Wildlife & Sport Fish Restoration
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

SUBJECT: Designation of Non-Federal Representative under Section 7 of the Federal Endangered Species Act

Dear Mr. Caslick:

I am writing to confirm that the Environmental Protection Agency, Region 9 (EPA) has designated the Hawaii Department of Health (DOH) as our non-federal representative pursuant to 50 CFR Section 402.08 for purposes of initiating the consultation process and preparing a biological assessment, if necessary, under Section 7 of the federal Endangered Species Act (ESA) for certain projects funded under the Hawaii Drinking Water State Revolving Fund (HI DWSRF) program and the Hawaii Clean Water State Revolving Fund (HI CWSRF) program. This designation applies to State Revolving Fund projects supported with funds directly made available by federal capitalization grants, called federally-assisted projects, unless EPA notifies your agency that this designation does not apply for a particular federally-assisted SRF project.

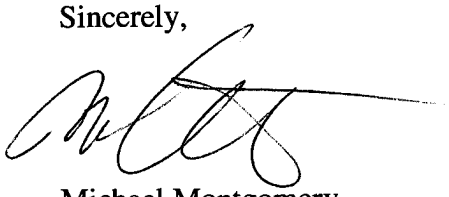
The HI DWSRF and HI CWSRF programs are administered by the State under Title VI of the federal Clean Water Act and Title XII of the Safe Drinking Water Act. The loan funds are capitalized by federal grants. Federally assisted projects must comply with a number of federal legal requirements, including ESA. Please note that, in some cases, the DOH may be assisted in its role as EPA's non-federal representative by the SRF loan recipient or a professional environmental consultant.

The roles and responsibilities for EPA and the DOH pursuant to the designation of DOH as the non-federal representative for conducting informal consultations are included in a letter from EPA to Keith Kawaoka, Deputy Director of Environmental Health, dated July 22, 2016 (a copy of which is enclosed). EPA will continue to be ultimately responsible for compliance with the Section 7 requirements of the ESA. The State requires, through loan contract provisions for federally-assisted SRF projects, that the loan recipients evaluate potential effects to listed species and designated critical habitat and to implement measures determined necessary or appropriate during the ESA Section 7 consultation process to avoid adverse effects to listed species (including incidental take) or adverse modification of designated or proposed critical habitat. Failure to implement such measures or steps may result in DOH

curtailment of financing, interest penalties, requirements of corrective action or other enforcement action as deemed necessary. Should DOH fail to properly enforce the implementation of such measures, EPA may take appropriate steps, including corrective action authorized by federal regulations, which may involve the withholding of SRF payments.

If you have any questions regarding this designation, please contact Doug Eberhardt, Infrastructure Section Manager, EPA Region 9, at (415) 972-3420. You may also contact Susan Polanco at (808) 541-2722.

Sincerely,



Michael Montgomery
Assistant Director, Water Division

Enclosure

cc:

Mr. Keith Kawaoka
Deputy Director for Environmental Health
Hawaii Department of Health
1250 Punchbowl Street, Room 325
Honolulu, Hawaii 96823

U.S. Fish and Wildlife Service
Pacific Islands WFSR Coordinator
300 Ala Moana Blvd.
Honolulu, Hawaii 96813

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 22, 2016

Michael Seki
Science Center Director
NOAA Inouye Regional Center
NMFS/PIFSC/DO
1845 Wasp Blvd., Building 176
Honolulu, HI 96818

SUBJECT: Designation of Non-Federal Representative under Section 7 of the Federal Endangered Species Act and Section 305(b)(2) of the Magnuson-Stevens Act

Dear Mr. Seki:

I am writing to confirm that the Environmental Protection Agency, Region 9 (EPA) has designated the Hawaii Department of Health (DOH) as our non-federal representative pursuant to 50 CFR Section 402.08 for purposes of initiating the consultation process and preparing a biological assessment, if necessary, under Section 7 of the federal Endangered Species Act (ESA) for certain projects funded under the Hawaii Drinking Water State Revolving Fund (HI DWSRF) program and the Hawaii Clean Water State Revolving Fund (HI CWSRF) program. In addition, I am confirming that EPA has designated DOH as the non-federal representative pursuant to 50 CFR Section 600.920(c) for purposes of initiating the consultation process with the National Marine Fisheries Service (NMFS) under Section 305(b)(2) of the Magnuson-Stevens Act (MSA) for projects funded under the HI DWSRF and HI CWSRF programs. These designations apply to State Revolving Fund projects supported with funds directly made available by federal capitalization grants, called federally-assisted projects, unless EPA notifies your agency that these designations do not apply for a particular federally-assisted SRF project.

The HCWSRF and HDWSRF programs are administered by the State under Title VI of the federal Clean Water Act and Title XII of the Safe Drinking Water Act. The loan funds are capitalized by federal grants. Federally assisted projects must comply with a number of federal legal requirements, including ESA and the MSA. Please note that, in some cases, the DOH may be assisted in its role as EPA's non-federal representative by the SRF loan recipient or a professional environmental consultant.

Responsibilities of Non-federal ESA Representative for Hawaii CWSRF and DWSRF Projects

The roles and responsibilities for EPA and the DOH pursuant to the designation of DOH as the non-federal representative for conducting informal consultations are included in a letter from EPA to Keith Kawaoka Deputy Director of Environmental Health, dated July 22, 2016 (a copy of which is attached). EPA will continue to be ultimately responsible for compliance with the Section 7 requirements of the ESA. The State requires, through loan contract provisions for federally-assisted SRF projects, that the

loan recipients evaluate potential effects to listed species and designated critical habitat and to implement measures determined necessary or appropriate during the ESA Section 7 consultation process to avoid adverse effects to listed species (including incidental take) or adverse modification of designated or proposed critical habitat. Failure to implement such measures or steps may result in DOH curtailment of financing, interest penalties, requirements of corrective action or other enforcement action as deemed necessary. Should DOH fail to properly enforce the implementation of such measures, EPA may take appropriate steps, including corrective action authorized by federal regulations, which may involve the withholding of SRF payments.

Designation of Non-federal Representative for Essential Fish Habitat Consultations

Under Section 305(b)(2) of the MSA, federal agencies are required to consult with NMFS if a federal activity or action may adversely affect "essential fish habitat" (EFH) as defined by NMFS under that Act. EPA's federal action of funding and overseeing the HI CWSRF and HI DWSRF programs requires appropriate compliance with MSA Section 305(b)(2).

EPA is by this letter notifying NMFS that it has designated DOH as the non-federal representative to conduct any required EFH consultations, as provided for in 50 CFR Section 600.920(c). Under the terms of that regulation, EPA will continue to be ultimately responsible for compliance with the consultation requirements of the MSA. The roles and responsibilities of EPA and DOH as to MSA consultations are outlined in the attached letter from EPA to DOH.

If you have any questions regarding these designations, please contact Doug Eberhardt, Infrastructure Section Manager, EPA Region 9, at (415) 972-3420. You may also contact Susan Polanco at (808) 541-2722.

Sincerely,

Mike Montgomery
Assistant Director, Water Division

Enclosure

cc:

Mr. Keith Kawaoka
Deputy Director for Environmental Health
Hawaii Department of Health
1250 Punchbowl Street, Room 325
Honolulu, Hawaii 96823

Mary Abrams, Field Supervisor
Ecological Services Branch
Pacific Islands Fish and Wildlife Office
U.S. Fish and Wildlife Service
Room 3-122
300 Ala Moana Blvd.
Honolulu, HI 96850

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

'OCT 1 9 2015

Alan Downer
Administrator, Hawaii State Historic Preservation Office
Kakuhihewa Building
601 Kamokila Blvd., Suite 555
Kapolei, Hawaii 96707

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Mr. Downer:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

Projects carried out with EPA assistance under the DWSRF may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Properties. The National Historic Preservation Act (NHPA), 54 U.S.C. §300101 *et seq.*, and its implementing regulations, 36 CFR Part 800, require federal agencies to consider the effects of their undertakings on historic properties.

Pursuant to 36 CFR §800.2(c)(4), a federal agency may authorize an applicant for federal assistance to initiate consultation with the State Historic Preservation Officer (SHPO) or Native Hawaiian organizations and others, provided that: (1) the Federal agency remains legally responsible for all findings and determinations charged to the agency official; and (2) the federal agency notifies the SHPO or Native Hawaiian organizations when an applicant is so authorized.

In accordance with 36 CFR §800.2(c)(4), EPA hereby authorizes DOH to act on EPA's behalf when initiating the NHPA consultation process in connection with DWSRF assistance to public and private community water systems and nonprofit non-community water systems. Effective immediately, DOH may consult with the SHPO and Native Hawaiian

organizations in the State of Hawaii and other relevant parties to initiate the review process established under 36 CFR Part 800 including identifying and evaluating historic properties, assessing effects, and proposing mitigation measures where necessary. However, EPA Region 9 will remain responsible for participating in the consultation process when:

- DOH determines that the "Criteria of Adverse Effect" under 36 CFR §800.5 applies to an undertaking;
- there is disagreement between DOH and the SHPO or Native Hawaiian organizations regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; or
- there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or
- there is potential for a foreclosure situation or intentional adverse effects as described under 36 CFR §800.9(b) and (c).

In accordance with 36 CFR §800.2(c)(2), EPA Region 9 shall ensure that all consultations with Native Hawaiian organizations are conducted in a sensitive manner concerning the needs of such organizations.

If you have any questions, please contact Susan Polanco in the Infrastructure Section, at (808) 541-2722 or via email at polanco.susan @epa.gov.

Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 1 9 2015

Soulee LKO Stroud, President
Association of Hawaiian Civic Clubs
P.O. Box 1135
Honolulu, Hawaii 96814-4920

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Mr. Stroud:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

Projects carried out with EPA assistance under the DWSRF may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Properties. The National Historic Preservation Act (NHPA), 54 U.S.C. §300101 *et seq.*, and its implementing regulations, 36 CFR Part 800, require federal agencies to consider the effects of their undertakings on historic properties.

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In accordance with 36 CFR §800.2(c)(4), EPA hereby authorizes DOH to act on EPA's behalf when initiating the NHPA consultation process in connection with DWSRF assistance to public and private community water systems and nonprofit non-community water systems. Effective immediately, DOH may consult with the SHPO and Native Hawaiian

organizations in the State of Hawaii and other relevant parties to initiate the review process established under 36 CFR Part 800 including identifying and evaluating historic properties, assessing effects, and proposing mitigation measures where necessary. However, EPA Region 9 will remain responsible for participating in the consultation process when:

- DOH determines that the "Criteria of Adverse Effect" under 36 CFR §800.5 applies to an undertaking;
- there is disagreement between DOH and the SHPO or Native Hawaiian organizations regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; or
- there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or
- there is potential for a foreclosure situation or intentional adverse effects as described under 36 CFR §800.9(b) and (c).

In accordance with 36 CFR §800.2(c)(2), EPA Region 9 shall ensure that all consultations with Native Hawaiian organizations are conducted in a sensitive manner concerning the needs of such organizations.

If you have any questions, please contact Susan Polanco in the Infrastructure Section, at (808) 541-2722 or via email at polanco.susan @epa.gov.

Sincerely,

for Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 19 2015

Edward Halealoha Ayau, Executive Director
Hui Malama I Na Kupuna O Hawai'l Nei
622 Wainaku Avenue
Hilo, Hawaii 96720

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Mr. Ayau:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

Projects carried out with EPA assistance under the DWSRF may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Properties. The National Historic Preservation Act (NHPA), 54 U.S.C. §300101 *et seq.*, and its implementing regulations, 36 CFR Part 800, require federal agencies to consider the effects of their undertakings on historic properties.

Pursuant to 36 CFR §800.2(c)(4), a federal agency may authorize an applicant for federal assistance to initiate consultation with the State Historic Preservation Officer (SHPO) or Native Hawaiian organizations and others, provided that: (1) the Federal agency remains legally responsible for all findings and determinations charged to the agency official; and (2) the federal agency notifies the SHPO or Native Hawaiian organizations when an applicant is so authorized.

In accordance with 36 CFR §800.2(c)(4), EPA hereby authorizes DOH to act on EPA's behalf when initiating the NHPA consultation process in connection with DWSRF assistance to public and private community water systems and nonprofit non-community water systems. Effective immediately, DOH may consult with the SHPO and Native Hawaiian

organizations in the State of Hawaii and other relevant parties to initiate the review process established under 36 CFR Part 800 including identifying and evaluating historic properties, assessing effects, and proposing mitigation measures where necessary. However, EPA Region 9 will remain responsible for participating in the consultation process when:

- DOH determines that the "Criteria of Adverse Effect" under 36 CFR §800.5 applies to an undertaking;
- there is disagreement between DOH and the SHPO or Native Hawaiian organizations regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; or
- there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or
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Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 1 9 2015

Piilani Hanohano, Government Relation Coordinator
Kamehameha Schools – Community Relations
And Communications Group, Government Relations
567 South King Street, Suite 400
Honolulu, Hawaii 96813

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Ms. Hanohano:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

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Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 19 2015

Kaleo Patterson, President
Native Hawaiian Church
1127 Bethel Street, Suite 16
Honolulu, Hawaiii 96813

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Mr. Patterson:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

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Sincerely,

for Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 1 9 2015

Hinaleimoana Wong-Kalu
c/o Mr. Hinano Rodrigues
Acting History and Culture Branch Chief
O'ahu Island Burial Council
DLNR Maui Office Annex
State Historic Preservation Division
130 Mahalani Street
Wailuku, Hawaii 96793

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Ms. Wong-Kalu:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

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In accordance with 36 CFR §800.2(c)(2), EPA Region 9 shall ensure that all consultations with Native Hawaiian organizations are conducted in a sensitive manner concerning the needs of such organizations.

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Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 19 2015

Leimomi Khan, President
Kalihi Palama Hawaiian Civic Club
c/o 1288 Kapiolani Boulevard Unit 1905
Honolulu, Hawaii 96814

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Ms. Khan:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

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If you have any questions, please contact Susan Polanco in the Infrastructure Section, at (808) 541-2722 or via email at polanco.susan @epa.gov.

Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 1 9 2015

Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Office
Office of Hawaiian Affairs
560 North Nimitz Highway, #200
Honolulu, Hawaii 96817

Re: U.S. Environmental Protection Agency Region 9 authorization to allow the Hawaii State Department of Health to initiate consultation with the State Historic Preservation Officer and Native Hawaiian organizations for projects funded under the Drinking Water State Revolving Fund Program

Dear Mr. Crabbe:

The U.S. Environmental Protection Agency Region 9 (EPA) administers the Drinking Water State Revolving Fund (DWSRF) Program, which authorizes capitalization grants to state Agencies in Region 9, including the Hawaii State Department of Health (DOH). In turn, DOH provides assistance to public and private community water systems as well as nonprofit non-community water systems for DWSRF projects.

Projects carried out with EPA assistance under the DWSRF may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Properties. The National Historic Preservation Act (NHPA), 54 U.S.C. §300101 *et seq.*, and its implementing regulations, 36 CFR Part 800, require federal agencies to consider the effects of their undertakings on historic properties.

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- there is potential for a foreclosure situation or intentional adverse effects as described under 36 CFR §800.9(b) and (c).

In accordance with 36 CFR §800.2(c)(2), EPA Region 9 shall ensure that all consultations with Native Hawaiian organizations are conducted in a sensitive manner concerning the needs of such organizations.

If you have any questions, please contact Susan Polanco in the Infrastructure Section, at (808) 541-2722 or via email at polanco.susan @epa.gov.

Sincerely,

Michael Montgomery
Acting Division Director
Water Division

Cc:
Joanna Seto, P.E.
Chief, Safe Drinking Water Branch
Environmental Management Division
Hawaii Department of Health
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814-4920

United States Environmental Protection Agency

Advisory Control On Historic Preservation

National Council Of State Historic Preservation Officers

(A-104) (WH-547) 20E-4001

EPA

Programmatic Agreement On Historic Preservation for the State Revolving Fund

Contents

Programmatic Agreement *

(EPA) PW-95934563-0
90004

PROGRAMMATIC AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
CONCERNING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT
UNDER
EPA's STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

WHEREAS, the U.S. Environmental Protection Agency (EPA) awards capitalization grants to States to establish State Revolving Fund (SRF) programs within State Agencies (each hereinafter referred to as "SRF Agency") authorized under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq., as amended); and

WHEREAS, the EPA has issued Initial Guidance for the SRF program (January 1988), Appendix D of which (Attachment 1) contains criteria for approval of State Environmental Review Processes (SERPs); and

WHEREAS, Sections 106 and 110(b), (d) and (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(b), (d), and (f)) apply to all SRF assistance directly made available to States by federal capitalization grants (EPA federal assistance); and

WHEREAS, projects carried out with EPA federal assistance may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (historic properties); and

WHEREAS, the EPA has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800, et seq.) implementing Sections 106 and 110(f) of the NHPA;

NOW, THEREFORE, the EPA, the Council, and the NCSHPO agree that the SRF program shall be administered in accordance with the following stipulations, which will be deemed to satisfy EPA's Section 106 and 110(f) responsibilities for all EPA SRF program actions and SRF Agency program actions undertaken with EPA federal assistance.

Stipulations

EPA will ensure that the following measures are carried out:

1. Purpose and Applicability.

(a) This Programmatic Agreement [PA] sets forth the process by which EPA will meet its responsibilities under Sections 106 and 110(d) and 110(f) of the NHPA with the assistance of SRF agencies. As such, it sets forth the basis for SRF Agency review of individual projects that may affect historic properties, and establishes how EPA will be involved in such review.

(b) This PA is applicable to the review of CWA Section 212 (wastewater treatment facilities), 319 (non-point source pollution control) and 320 (estuary protection) projects that receive EPA federal assistance under an SRF Agency's program.

2. Responsibilities of EPA and SRF Agencies.

In compliance with its responsibilities under the NHPA and as a condition of its award of any capitalization grant to a State, EPA shall require that the SRF Agency or another designated State agency carry out the requirements of 36 CFR 800.4 through 800.6, with reference to 36 CFR 800.1, 800.2, 800.3, 800.8, 800.9, 800.10, 800.11, 800.12 and 800.14 (see 36 CFR Part 800, Attachment 2) and applicable Council standards and guidelines for all SRF Agency actions that receive EPA federal assistance. EPA will participate in the process to the extent mutually agreed upon by the EPA Regional Administrator and the SRF Agency, but at a minimum, EPA must be notified by the SRF Agency if after routine consultation or coordination with the State Historic Preservation Officer (SHPO) disputes remain pursuant to stipulation #5.

3. Use of SRF Certification Reviews and Annual Reviews.

(a) Certification reviews. EPA will review, or re-review as may be necessary, the certification each State is required to provide as a part of its initial application for SRF capitalization grant funding to ensure that:

(1) The State has the authority and capability to carry out the responsibilities assigned to the SRF Agency as described in this PA; and

(2) The SRF Agency will carry out such responsibilities.

(b) Programmatic coordination and consultation. Whenever an EPA Regional Administrator prepares for an annual review of an SRF Agency's program, the EPA Regional Administrator will afford the appropriate SHPO and the Council the opportunity to comment on their experiences with EPA's and the SRF Agency's execution of their respective responsibilities assigned under this PA and the SRF capitalization grant agreement, and shall consider such comments in the conduct of its annual review. If problems are reported with the execution of responsibilities under this PA, the EPA will consult with the SHPO or the Council and other interested persons if appropriate, and if mutually agreed that participation is necessary, the EPA will invite the SHPO or the Council to participate directly in the EPA's annual review on SRF program matters involving their jurisdiction or expertise.

(c) Annual reviews. (1) During each annual review of an SRF Agency's program, the EPA Regional Administrator will ensure that the SRF Agency is using:

(i) adequate expertise to carry out its responsibilities consistent with the professional qualifications standards found in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44738-9) (Attachment 3);

(ii) effective mechanisms for carrying out the responsibilities assigned to it under the capitalization grant agreement, in accordance with this PA, including those assigned pursuant to stipulation 2 above;

(iii) effective mechanisms for identifying historic properties subject to potential effect by SRF Agency actions using EPA federal assistance, taking into account the Council's publication: "Identification of Historic Properties: a Decisionmaking Guide for Managers" (1988) (Attachment 4);

(iv) effective procedures for involving interested parties and the public in the review process taking into account the

Council publication: "Public Participation in Section 106 Review: A Guide for Agency Officials" (1989) (Attachment 5); and

(v) effective mechanisms for avoiding, minimizing, or mitigating adverse effects on historic properties.

(2) The EPA will further ensure that deficiencies noted in carrying out of responsibilities under this PA and capitalization grant agreement (including any alternative review process contained in an approved SERP), as a result of oversight provided by the Council, SHPO and EPA's annual reviews, are remedied or effectively rebutted with appropriate documentation. Notification of deficiencies, suggested remedies affecting the work of the SRF Agency, and proposed EPA action (if any), shall be included in the report sent to the SRF Agency at the conclusion of an annual review. If the report identifies deficiencies, remedies or actions concerning NHPA compliance, a copy of those portions of the report will be sent to the appropriate SHPO and the Council.

4. State/SHPO Consultation/Coordination.

The Regional Administrator will ensure that a State's capitalization grant agreement provides consultation and coordination between the SRF Agency and the SHPO that is consistent with 36 CFR 800.4, 800.5, and 800.14, and with the guidance outlined in Attachment 6.

5. Dispute Resolution.

(a) Either the SRF Agency or the SHPO may, at its own discretion, request that the EPA Regional Office and/or the Council participate in the review of individual SRF projects or assist in resolving disputes that may arise between the two State agencies. The EPA and the Council will participate in reviewing and assisting the State agencies if so requested, and may participate at their own discretion, when significant issues are raised from other sources, without such a request.

(b) In situations where disagreements among the SRF Agency and SHPO cannot be resolved in consultation with either the EPA Regional Office or the Council, the EPA will be responsible for resolving the dispute in consultation with the Council in accordance with 36 CFR 800.4 through 800.6 as applicable.

6. Applicable Guidance.

(a) Implementation of this PA will be guided by Attachments 1 through 6 and such program guidance or regulations as EPA may

issue subsequently, and the applicable regulations, standards, guidelines and explanatory bulletins of the Council and the Department of the Interior.

(b) In consultation with SRF Agencies and the NCSHPO, the EPA and Council may from time to time jointly develop and provide SRF Agencies and SHPOs with additional guidance or training.

7. Distribution.

Following the Council's publication of the required notice of an approved PA in the Federal Register, EPA will distribute copies of this PA and its attachments to all EPA Regional SRF and National Environmental Policy Act (NEPA) Coordinators, SRF Agencies, SHPOs, and requesting parties.

8. Amendment.

Any party to this PA may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.13 to consider such amendment.

9. Termination.

Any party to this PA may terminate it by providing ninety (90) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will ensure compliance with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this PA.

Execution of this PA, and carrying out its terms, evidences that the EPA has satisfied its Section 106 and 110(f) responsibilities under the NHPA for Title VI of the CWA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: March 19, 1990
Chairman

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 3/23/90
Director, Office of Federal Activities

By: _____ Date: 3/23/90
Director, Office of Municipal Pollution Control

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: _____ Date: 3/05/90
President

Attachment 1

ATTACHMENT #1

federal register

Monday
March 19, 1990

Part III

Environmental Protection Agency

40 CFR Part 35
State Revolving Fund Program Implementation Regulations; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3677-5]

RIN 2040-AB64

State Revolving Fund Program Implementation Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the State water pollution control revolving fund capitalization grant program. The program, under which the Environmental Protection Agency (EPA) awards grants to States to capitalize funds that will provide assistance for water pollution control purposes, was established in the Water Quality Act of 1987 as a new title VI to the Clean Water Act.

DATES: This interim rule is effective March 19, 1990. Comments must be received on or before May 18, 1990.

ADDRESSES: Comments may be mailed to Geoffrey Cooper, Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Geoffrey Cooper (202/382-2287).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

This interim rule implements section 205(m) and title VI of the Federal Water Pollution Control Act (33 U.S.C. 1285(m) and 33 U.S.C. 1381-1387), which is commonly known as the Clean Water Act (the Act). Title VI was established in the Act by the Water Quality Act of 1987 (the Amendments; Pub. L. 100-4). Under section 501(a) of the Act, the Administrator of the Environmental Protection Agency (EPA) is authorized to "Prescribe such regulations as are necessary to carry out his functions under (the) Act." 33 U.S.C. 1361(a).

II. Purpose

Under the newly created title VI of the Clean Water Act, qualifying States will be awarded grants by the EPA to establish and capitalize State water pollution control revolving funds (SRFs). From these funds, the States may provide loans and other forms of assistance, but may not provide grants, for (1) wastewater treatment facility construction, (2) implementation of nonpoint source management programs, and (3) development and implementation of estuary conservation and management plans.

In developing this regulation to implement the provisions of title VI, EPA has attempted to identify all the major program requirements applicable to the SRF program. To that end, this regulation includes items required by the statute and those additional minimum program requirements that EPA considers necessary for effective program management. Administrative requirements applicable to all EPA assistance agreements are contained in EPA's general assistance regulations at 40 CFR part 31 and debarment and suspension regulations at 40 CFR part 32.

Note.—Previous drafts of these regulations, which have been informally reviewed by Agency and State personnel, began at 40 CFR 35.4000 and ended with 40 CFR 35.4080. Because the § 35.4000 series is already occupied, the numbering scheme has been changed. These regulations now begin at 40 CFR 35.3100 and end at 40 CFR 35.3170. Also, the numbering sequence, which in previous draft was divided by 10, is now divided by 5 to eliminate a level of subparagraphs.

III. The SRF Capitalization Grant Program of Title VI (40 CFR 35, Subpart K)

The new title VI of the Act authorizes EPA to award capitalization grants to States that have established SRFs that comply with the requirements of title VI. The States must also contribute to the capitalization of their SRFs by depositing State monies equaling at least 20 percent of each grant payment. From these funds the States may provide loans and other types of financial assistance, but may not provide grants, to local communities, intermunicipal, interstate and State agencies for the contribution of publicly owned wastewater treatment facilities, and to eligible recipients for implementation of the new nonpoint source pollution control program and for development and implementation of estuary protection plans.

Congress anticipated that most of the financial assistance provided by the SRFs would be in the form of loans. Loan repayments would then provide a continuing source of capital for States to make additional assistance available to localities and other eligible recipients for water pollution control facilities and programs.

The SRF capitalization grants program is fundamentally different from the established construction grants programs. In the construction grants program EPA awards grants directly to municipalities for the Federal share of eligible costs of treatment work construction. The program is Federally administered and most of the program activities are conducted by the States under delegation agreements. The Federal role in the capitalization grants program is limited to program-level grants-making and review. Each SRF is to be administered and operated by the State, with minimal Federal requirements imposed on its structure.

IV. SRF Program Implementation

At least three major objectives are apparent in the language and the legislative history of title VI. Congress devised the SRF capitalization grant program to enable States to quicken the pace of wastewater treatment facility construction in order to meet the enforceable requirements of the Clean Water Act, to increase the emphasis on nonpoint source pollution control and the protection of estuaries and to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. EPA intends to achieve these objectives by implementing the program pursuant to this rule.

Before this rule was promulgated, the SRF capitalization grant program was implemented in accordance with the requirements set forth in the Initial Guidance for State Revolving Funds. The Initial Guidance was signed by the Assistant Administrator for Water and January 28, 1988 and made available to the public by the Agency on February 2, 1988 (53 FR 2887). A supplementary memorandum to the Initial Guidance was signed by the Assistant Administrator for Water on September 30, 1988 and issued to the Agency's Regional offices and appropriate State agencies. Program requirements contained in these two documents are superseded by these regulations.

The Initial Guidance, the SRF Management Manual and other

memoranda such as periodic question and answer documents, and model agreements and reports, will provide guidance on SRF program implementation. State specific details regarding the operation of revolving loan fund programs will be developed between the States and EPA Regional Offices during the capitalization grant agreement process.

Shortly after enactment of the 1987 Amendments, the Agency convened a workgroup to prepare a Concept Paper outlining an approach to implementation of the new program. Regional personnel, personnel from other Federal agencies such as the Treasury Department, representatives of State environmental protection agencies and municipal interests participated on the workgroup preparing the Concept Paper and, later, the draft of the Initial Guidance. The Concept Paper was made available for public comment on April 8, 1987 (52 FR 12249). Through the late spring and early summer of 1987, the workgroup analyzed comments on this document and began preparing the draft Initial Guidance, which was also issued for public comment on September 4, 1987 (52 FR 33643).

The Agency then analyzed the public's response to the implementation approach reflected in the draft Initial Guidance Nearly half of the response were from the State agencies that will administer the program. Other respondents included municipalities and municipal interests, financial firms and engineers. Issues raised were resolved and incorporated in the final Initial Guidance, which forms the basis for these interim regulations. Several of the key provisions in the regulations are discussed below.

V. Major Matters in this Rule

A. Payments and cash draws (40 CFR 35.3155 and 40 CFR 35.3160)

The payments issue received the most attention throughout the development of the Initial Guidance. For each capitalization grant, the Agency will make payments by increasing the amount of funds available for cash draw in a letter of credit (LOC). These payments will be made quarterly according to a payment schedule negotiated between the Regional office and the State. The State will draw cash under the letter of credit according to rules applicable to each form of assistance.

By making grant amounts available in keeping with the State's binding commitments and by permitting cash draws from the LOC at the time construction costs or other eligible costs are incurred, the letter of credit mechanism will enable States to effectively operate SRF programs, and to use the fund for any purpose permitted by the Act, while enabling the Federal government to manage outlays efficiently.

With its first capitalization grant, the State must submit a schedule of estimated quarterly disbursements from the grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year thereafter, the State must submit a schedule of estimated quarterly disbursements for the following Federal fiscal year. If the State anticipates that actual quarterly disbursements may deviate significantly (by more than ten percent) from the estimated amounts, it must notify the Agency.

B. Refinancing (40 CFR 35.3120(b))

In addition to loans and other forms of assistance, title VI authorizes an SRF to refinance local "debt obligations incurred after March 7, 1985," the date on which the Water Quality Act was introduced in the Senate. The statutory language does not indicate whether a community must have commenced construction after that date as well. However, the legislative history of this provision indicates that Congress was seeking to spur construction of needed projects while title VI was being considered, and not to encourage communities to refinance construction that had been completed or that was underway on that date Therefore, an SRF may refinance debt where that debt was incurred and building began after March 7, 1985.

Projects that began between March 7, 1985 and the issuance of the Initial Guidance on January 28, 1988 must comply with the requirements of title VI in order to be eligible for refinancing. For example, if a State wishes to count the costs of refinancing a project toward satisfaction of title II requirements in section 602(b)(5), that project must have undergone an environmental review that conformed generally with the National Environmental Policy Act. Projects that began after the Initial Guidance was issued but before the effective date of this rule must comply with the statutory requirements and with any additional requirements in the Initial Guidance. Projects that begin after the effective date of this rule must meet all of its requirements.

C. State Match (40 CFR 35.3135(b))

The Act requires the State to deposit State monies in the SRF in an amount equaling at least 20 percent of each Federal grant payment. During development of the Initial Guidance, considerable discussion arose over whether the SRF itself could participate in acquiring the State's matching amount, or whether the match must be derived from traditional sources of revenues, such as annual legislative appropriations.

As provided for in the Initial Guidance, this rule permits States to issue bonds to acquire the match, and retire bonds with the interest earned by the Fund. Other proposed mechanisms by which the fund will participate in deriving the match must be reviewed on an individual basis to ensure that they do not impair the SRF's integrity and to demonstrate that the money is not derived from other Federal sources, unless specifically permitted by the Federal law under which it is available.

The rule also permits the State to provide its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal letter of credit is drawn upon.

D. "First Use" Requirements (40 CFR 35.3135(e))

Congress directed States to address certain projects needing construction to comply with the enforceable requirements of the Act, before SRF funds can be used for other eligible purposes. This requirement applies to the Federal grant, the State match and repayments of principal and payments of interest from the first round of loans issued from the Federal grant. Before these funds may be used for any purpose authorized by the Act, the State's National Municipal Policy major and minor treatment works must be maintaining progress toward compliance with the enforceable goals, deadlines and requirements of the Act.

This interpretation of section 602(b)(5) is consistent with the legislative history of the Act. The Conference Report to the 1987 Amendments explains that "funds as a result of capitalization grants" include the grant, the State match and the repayments of loans issued from the grant. The Act describes the projects that must comply with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988.

E. Environmental Review Requirements (40 CFR 35.3140)

Under section 602(b)(6), all section 212 publicly owned treatment works projects assisted with funds "directly made available by" capitalization grants, including activities conducted

under sections 319 and 320 that are also section 212 publicly owned treatment works, must undergo environmental reviews that are substantially similar to the reviews conducted in the title II program under the National Environmental Policy Act (NEPA). During development of the Initial Guidance, this matter emerged as one for which the Agency felt an additional program requirement was necessary.

This rule extends less detailed environmental review requirements to all section 212 projects funded from sources other than funds "directly made available by" capitalization grants. The statutory basis for imposing this requirement, which is in keeping with the Agency's mission, is section 602(b) of the Act. Section 602(a) authorizes the Administrator to include requirements in the capitalization grant agreement that are not specified in that section. Projects that are statutorily subject to review under section 602(b)(6) must undergo a State environmental review process that reflects the essential elements of NEPA. All other section 212 treatment works projects are subject to less detailed environmental review requirements.

F. Cross-cutting Authorities (40 CFR 35.3145)

There are a number of other Federal laws and directives that apply by their own terms to all projects or activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. The Agency has determined that these "cross-cutting" authorities apply to SRF programs or projects assisted with funds "directly made available by" capitalization grants, which are funds equaling the amount of the Federal grant. The Agency has also determined that all activities of the State capitalization grant recipient (for example, the State's administration of the program) are subject to the Civil Rights Act, pursuant to the Civil Rights Restoration Act of 1988. A list of these cross-cutting authorities is attached as Appendix F of the Initial Guidance. Each capitalization grant agreement will contain a condition ensuring that the projects or activities assisted with funds "directly made available by" capitalization grants will comply with the cross-cutting authorities and that the State will notify the Regional Office when consultation or coordination with other Federal agencies is necessary to resolve compliance issues. The rule describes the extent to which cross-cutting authorities apply.

VI. Regulation Development

A. Regulatory Impact Analysis

This regulation has been reviewed under Executive Order 12291 and does not meet the criteria for a major regulation. This regulation will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating in foreign or domestic markets. Because this regulation is not a major rule, a Regulatory Impact Analysis is not required. This regulation has been submitted to the Office of Management and Budget for review under the Executive Order.

B. Regulatory Flexibility Act

EPA did not develop a regulatory flexibility analysis for this rule because grants regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., and has assigned OMB control number 2040–0118.

Public reporting burden for this collection is estimated to average 290 hours per response, including time for reviewing instructions, searching existing data, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2040–0118) Washington, D.C. 20503, marked "Attention, Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 35

Capitalization grants, State water pollution control revolving funds, Wastewater treatment.

William K. Reilly,

Administrator.

Date March 7, 1990.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 40 CFR part 35 by adding a new subpart K to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart K—State Water Pollution Control Revolving Funds

Subpart K—State Water Pollution Control Revolving Funds

Authority: Sections 205(m), 501(a) and title VI of the Clean Water Act, as amended, 33 U.S.C. 1285(m), 33 U.S.C. 1361(a), 33 U.S.C. 1381–1387.

§ 35.3100 Policy and purpose.

(a) The Agency intends to implement the State water pollution control revolving fund program in a manner that preserves for States a high degree of flexibility for operating their revolving funds in accordance with each State's unique needs and circumstances. The purpose of these regulations is to advance the general intent of title VI of the Clean Water Act, which is to ensure that each State's program is designed and operated to continue providing assistance for water pollution control activities in perpetuity.

(b) These regulations reflect statutory and program requirements that have been previously published in the Initial Guidance for State Revolving Funds, which was signed by the Assistant Administrator for Water on January 28, 1988, and the supplementary memorandum to the Initial Guidance for

State Revolving Funds, which was [redacted]d by the Assistant Administrator [redacted]ater on September 30, 1988. Copies of both documents can be obtained by writing the Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(c) These regulations supplement title VI by codifying all major program requirements, applicable to the SRF program. EPA will not impose additional major program requirements without an opportunity for affected parties to comment. The process for amending this regulation to incorporate these requirements will begin within three months of their issuance.

§ 35.3105 Definitions.

Words and terms that are not defined below and that are used in this rule shall have the same meaning they are given in 40 CFR part 31 and 40 CFR part 35, subpart I.

(a) *Act.* The Federal Water Pollution Control Act, more commonly known as the Clean Water Act (Pub. L. 92-500), as amended by the Water Quality Act of 1987 (Pub. L. 100-4). 33 U.S.C. 1251 et seq.

(b) *Binding Commitment.* A legal obligation by the State to a local [redacted]ipient that defines the terms for [redacted]tance under the SRF.

[redacted](c) *Capitalization Grant.* The assistance agreement by which the EPA obligates and awards funds allotted to a State for purposes of capitalizing that State's revolving fund.

(d) *Cash draw.* The transfer of cash under a letter of credit (LOC) from the Federal Treasury into the State's SRF.

(e) *Disbursement.* The transfer of cash from an SRF to an assistance recipient.

(f) *Equivalency projects.* Those section 212 wastewater treatment projects constructed in whole or in part before October 1, 1994, with funds "directly made available by" the capitalization grant. These projects must comply with the requirements of section 602(b)(6) of the Act.

(g) *Funds "directly made available by" capitalization grants.* Funds equaling the amount of the grant.

(h) *Payment.* An action by the EPA to increase the amount of capitalization grant funds available for cash draw from an LOC.

(i) *SRF.* State water pollution control revolving fund.

§ 35.3110 Fund establishment.

(a) *Generally.* Before the Regional Administrator (RA) may award a [redacted]italization grant, the State must [redacted]ablish an SRF that complies with section 603 of the Act and this rule.

(b) *SRF accounts.* The SRF can be established within a multiple-purpose State financing program. However, the SRF must be a separate account or series of accounts that is dedicated solely to providing loans and other forms of financial assistance, but not grants.

(c) *SRF administration.* The SRF must be administered by an instrumentality of the State that is empowered to manage the Fund in accordance with the requirements of the Act. Where more than one agency of the State is involved in administering the activities of the State's program, the functions and the relationships of those agencies must be established to the satisfaction of the RA.

(d) *Documentation of the establishment of an SRF program.* (1) As part of its initial application for the capitalization grant, the State must furnish the RA with documentation of the establishment of an SRF and designation of the State instrumentality that will administer the SRF in accordance with the Act.

(2) With each capitalization grant application, the State's Attorney General (AG), or someone designated by the AG, must sign or concur in a certification that the State legislation establishing the SRF and the powers it confers are consistent with State law, and that the State may legally bind itself to the terms of the capitalization grant agreement.

(3) Where waiting for the AG's signature or concurrence would by itself significantly delay awarding the first grant (i.e., there are no other issues holding up the award), the head or chief legal officer of the State agency which has direct responsibility for administering the SRF program may sign the certification at the time of the capitalization grant award, provided the capitalization grant agreement contains a special condition requiring the State to submit the AG/designee's concurrence to EPA within a reasonable time, not to exceed 120 days, after the grant is awarded.

(e) *Allotment.* (1) Appropriations for fiscal years 1987 through 1990 under both title II and title VI programs will be allotted in accordance with the formula contained in section 205(c)(3) of the Act.

(2) Title VI funds are available for the Agency to obligate to the State during the fiscal year in which they are allotted and during the following fiscal year. The amount of any title VI allotment not obligated to the State at the end of this period of availability will be reallotted for title VI purposes in accordance with 40 CFR 35.2010.

(3) A State that does not receive grants that obligate all the funds allotted to it under title VI in the first year of its availability will not receive reallotted funds from that appropriation.

(4) Notwithstanding 40 CFR 35.910 and 40 CFR 35.2010(a), deobligations and reallotments of title II funds may be transferred to a title VI capitalization grant regardless of either the year in which the title II funds were originally allotted or the year in which they are deobligated or reallotted.

(f) *Transfer of title II allotments.* A State may exercise the option to transfer a portion of its title II allotment for deposit, through a capitalization grant, into an established water pollution control revolving fund, under section 205(m) of the Act.

(1) If the State elects this option, the Governor of the State must submit a Notice of Intent to the RA specifying the amount of the title II allotment the State intends to use for title VI purposes during the fiscal year for which it is submitted. The Notice may also identify anticipated, unobligated title II funds from the prior fiscal year, and request transfer of those funds as well.

(2) Each Notice of Intent must be submitted on or before July 3 of the year preceding the Federal fiscal year in which those funds are available. If a State fails to file a Notice of Intent on or before the prescribed date, then the State may not transfer title II allotments into an SRF in the upcoming fiscal year. A timely Notice of Intent may be later withdrawn or amended.

(3) When the capitalization grant is awarded, funds requested under section 205(m) of the Act will be obligated under title VI for the activities of the SRF. If a Notice of Intent anticipates transfer of funds under the authority of section 205(m), but those funds are not so obligated by the end of the two year period of availability, they will be subject to reallotment as construction grant funds.

(g) *Reserves and transferred allotments.* (1) Funds reserved under section 205(g) of the Act can be used to develop SRF programs. However, before any of these funds may be used for purposes of the SRF, the State must establish to the satisfaction of the RA that adequate funds, up to the section 205(g) maximum, will be available from any source to administer the construction grants program.

(2) Funds reserved under sections 205(j)(1) and 205(j)(5) of the Act must be calculated based on the State's full title II allotment, and cannot be transferred to the SRF.

(3) Funds reserved under sections 201(l)(2), 205(h), and 205(i) of the Act must also be calculated based upon the

State's full title II allotment. However, these reserves may be transferred into an SRF.

(4) The State must reserve from each fiscal year's title VI allotment the greater of one percent of its allotment or $100,000 to carry out planning under sections 205(j) and 303(e) of the Act.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3115 Eligible activities of the SRF.

Funds in the SRF shall not be used to provide grants. SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance:

(a) To municipalities, intermunicipal, interstate, or State agencies for the construction of publicly owned wastewater treatment works as these are defined in section 212 of the Act and that appear on the State's priority list developed pursuant to section 216 of the Act; and

(b) For implementation of a nonpoint source pollution control management program under section 319 of the Act; and

(c) For development and implementation of an estuary conservation and management plan under section 320 of the Act.

§ 35.3120 Authorized types of assistance.

The SRF may provide seven general types of financial assistance.

(a) *Loans.* The SRF may award loans at or below market interest rates, or for zero interest.

(1) Loans may be awarded only if:

(i) All principal and interest payments on loans are credited directly to the SRF;

(ii) The annual repayment of principal and payment of interest begins not later than one year after project completion;

(iii) The loan is fully amortized not later than twenty years after project completion; and

(iv) Each loan recipient establishes one or more dedicated sources of revenue for repayment of the loan.

(2) Where construction of a treatment works has been phased or segmented, loan repayment requirements apply to the completion of individual phases or segments.

(b) *Refinancing existing debt obligations.* The SRF may buy or refinance local debt obligations at or below market rates, where the initial debt was incurred after March 7, 1985, and building began after that date.

(1) Projects otherwise eligible for refinancing under this section on which building began:

(i) Before January 28, 1988 (the effective date of the Initial Guidance for State Revolving Funds) must meet the requirements of title VI to be fully eligible.

(ii) After January 28, 1988, but before the effective date of this rule, must meet the requirements of title VI and of the Initial Guidance for State Revolving Funds to be fully eligible.

(iii) After March 19, 1990 must meet the requirements of this rule to be fully eligible.

(2) Where the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, an SRF may provide refinancing only for eligible purposes, and not for the entire debt.

(c) *Guarantee or purchase insurance for local debt obligations.* The SRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The SRF may also purchase or provide bond insurance to guarantee debt service payment.

(d) *Guarantee SRF debt obligations.* The SRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State provided that the net proceeds of the sale of such bonds are deposited in the SRF.

(e) *Loan guarantees for "sub-State revolving funds."* The SRF may provide loan guarantees for similar revolving funds established by municipal or intermunicipal agencies, to finance activities eligible under title VI.

(f) *Earn interest on fund accounts.* The SRF may earn interest on Fund accounts.

(g) *SRF administrative expenses.* (1) Money in the SRF may be used for the reasonable costs of administering the SRF, provided that the amount does not exceed 4 percent of all grant awards received by the SRF. Expenses of the SRF in excess of the amount permitted under this section must be paid for from sources outside the SRF.

(2) Allowable administrative costs include all reasonable costs incurred for management of the SRF program and for management of projects receiving financial assistance from the SRF. Reasonable costs unique to the SRF, such as costs of servicing loans and issuing debt, SRF program start-up costs, financial management, and legal consulting fees, and reimbursement costs for support services from other State agencies are also allowable.

(3) Unallowable administrative costs include the costs of administering the construction grant program under section 205(g), permit programs under sections 402 and 404 and Statewide wastewater management planning programs under section 208(b)(4).

(4) Expenses incurred issuing bonds guaranteed by the SRF, including the costs of insuring the issue, may be absorbed by the proceeds of the bonds, and need not be charged against the 4 percent administrative costs ceiling. The net proceeds of those issues must be deposited in the Fund.

§ 35.3125 Limitations on SRF assistance.

(a) *Prevention of double benefit.* If the SRF makes a loan in part to finance the cost of facility planning and preparation of plans, specifications, and estimates for the building of treatment works and the recipient subsequently receives a grant under section 201(g) for the building of treatment works and an allowance under section 201(1)(1), the SRF shall ensure that the recipient will promptly repay the loan to the extent of the allowance.

(b) *Assistance for the non-Federal share.* (1) The SRF shall not provide a loan for the non-Federal share of the cost of a treatment works project for which the recipient is receiving assistance from the EPA under any other authority.

(2) The SRF may provide authorized financial assistance other than a loan for the non-Federal share of a treatment works project receiving EPA assistance if the Governor or the Governor's designee determines that such assistance is necessary to allow the project to proceed.

(3) The SRF may provide loans for subsequent phases, segments, or stages of wastewater treatment works that previously received grant assistance for earlier phases, segments, or stages of the same treatment works.

(4) A community that receives a title II construction grant after the community has begun building with its own financing, may receive SRF assistance to refinance the pre-grant work, in accordance with the requirements for refinancing set forth under § 35.3120(b) of this part.

(c) *Publicly owned portions.* The SRF may provide assistance for only the publicly owned portion of the treatment works.

(d) *Private operation.* Contractual arrangements for the private operation of a publicly owned treatment works will not affect the eligibility of the treatment works for SRF financing.

(e) *Water quality management planning.* The SRF may provide assistance only to projects that are consistent with any plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Act.

§ 35.3130 The capitalization grant agreement.

(a) *Contents.* The capitalization grant agreement must contain or incorporate by reference the State's application, Intended Use Plan, agreed upon payment schedule, State environmental review process and certifications or demonstrations of other agreement requirements and, where used, the SRF Operating Agreement.

(b) *Operating agreement.* At the option of the State, the organizational and administrative framework and those procedures of the SRF program that are not expected to change annually may be described in an Operating Agreement (OA). The OA must be incorporated by reference in the grant agreement.

(c) *Application requirements.* The State must certify in its application that it has the legal, managerial, technical, and operational capabilities to administer the program. (Approved by the Office of Management and Budget under control number 2040–0118)

§ 35.3135 Specific capitalization grant agreement requirements.

(a) *Agreement to accept payments.* The State must agree to accept grant payments in accordance with the negotiated payment schedule.

(b) *Provide a State match.* The State must agree to deposit into its SRF an amount equaling at least 20 percent of the amount of each grant payment.

(1) The State match must be deposited on or before the date on which the State receives each payment from the grant award. The State may maintain its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal LOC is drawn upon.

(2) Bonds issued by the State for the match may be retired from the interest earned by the SRF (including interest on SRF loans) if the net proceeds from the State issued bonds are deposited in the fund. Loan principal must be repaid to the SRF and cannot be used to retire State issued bonds.

(3) The State must identify the source of the matching amount in the capitalization grant application and must establish to the RA's satisfaction that the source is not Federal money, unless specifically authorized to be used for such purposes under the statute making the funds available.

(4) If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements.

(5) If the State has deposited State monies in a dedicated revolving fund after March 7, 1985 and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement:

(i) If the monies were deposited in an SRF that subsequently received a capitalization grant and, if the deposit was expended, it was expended in accordance with title VI;

(ii) If the monies were deposited in a separate fund that has not received a capitalization grant, they were expended in accordance with title VI and an amount equal to all repayments of principal and payments of interest from these loans will be deposited in the Federally capitalized fund; or

(iii) If the monies were deposited in a separate fund and used as a reserve consistent with title VI, and an amount equal to the reserve is transferred to the Federally capitalized fund as its function is satisfied.

(c) *Binding commitments.* The State must make binding commitments in an amount equal to 120 percent of each quarterly grant payment within one year after the receipt of each quarterly grant payment.

(1) Binding commitments may be for any of the types of assistance provided for in sections 40 CFR 35.3120(a), (b), (c), (e) or (f) and for Fund administration under 40 CFR 35.3120(g).

(2) If the State commits more than the required 120 percent, EPA will recognize the cumulative value of the binding commitments, and the excess balance may be banked towards the binding commitment requirements of subsequent quarters.

(3) If the State does not make binding commitments equaling 120 percent of the quarterly grant payment within one year after it receives the payment, the RA may withhold future quarterly grant payments, and require adjustments to the payment schedule before releasing further payments.

(d) *Expeditious and timely expenditure.* The State must agree to expend all funds in the SRF in an expenditious and timely manner.

(e) *First use of funds.* (1) The State must agree to first use funds in the SRF equaling the amount of the grant, all repayments of principal and payments of interest on the initial loans from the grant, and the state match to address any major and minor publicly owned treatment works (POTW) that the Region and the State have previously identified as part of the National Municipal Policy list for the State.

(2) These funds may be used to fund the cost-effective reserve capacity of these projects.

(3) In order for a State to use these funds for other section 212 POTWs or for nonpoint source (section 319) or estuary (section 320) activities, the State must certify that the POTWs identified in § 35.3135(e)(1) are either:

(i) In compliance; or

(ii) On an enforceable schedule; or

(iii) Have an enforcement action filed; or

(iv) Have a funding commitment during or prior to the first year covered by the Intended Use Plan.

(4) Other funds in the SRF may be used at any time for the construction of any treatment works on the State's priority list or for activities under sections 319 and 320 of the Act.

(f) *Compliance with title II requirements.* (1) The State must agree that equivalency projects will comply with sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of the Act.

(2) The State must comply only with the statutory requirements. The State may develop its own procedures for implementing the statutory provisions. The RA will accept State procedures provided that the procedures will adequately assure compliance with the statutory requirements, considered in the context of the SRF program.

(3) Where the State funds equivalency projects for more than the capitalization grant amount, EPA will recognize the cumulative value of the eligible costs of the equivalency projects, and the excess balance may be banked toward subsequent year equivalency requirements.

(4) Only those eligible costs actually funded with loans or other authorized assistance from the SRF may be credited toward satisfaction of the equivalency requirement, and only in the amount of that assistance.

(g) *State laws and procedures.* The State must agree to commit or expend each quarterly capitalization grant payment in accordance with the State's own laws and procedures regarding the commitment or expenditure of revenues.

(h) *State accounting and auditing procedures.* (1) The State must agree to establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for payments received by the SRF, disbursements made by the SRF, and SRF balances at the beginning and end of the accounting period.

(2) The State must also agree to use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards as these are promulgated by the Governmental Accounting Standards Board. Generally accepted government

auditing standards are usually defined as, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Government Auditing Standards" (1988 revision).

(i) *Recipient accounting and auditing procedures.* The State must agree to require recipients of SRF assistance to maintain project accounts in accordance with generally accepted government accounting standards as these are promulgated by the Government Accounting Standards Board. These accounts must be maintained as separate accounts.

(j) *Annual report.* The State must agree to make an Annual Report to the RA on the actual use of the funds, in accordance with section 606(d) of the Act.

§ 35.3140 Environmental review requirements.

(a) *Generally.* The State must agree to conduct reviews of the potential environmental impacts of all section 212 construction projects receiving assistance from the SRF, including nonpoint source pollution control (section 319) and estuary protection (section 320) projects that are also section 212 projects.

(b) *NEPA-like State environmental review process.* Equivalency projects must undergo a State environmental review process (SERP) that conforms generally to the National Environmental Policy Act (NEPA). The State may elect to apply the procedures at 40 CFR part 6, subpart E and related subparts, or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met.

(1) *Legal foundation.* The State must have the legal authority to conduct environmental reviews of section 212 construction projects receiving SRF assistance. Such authority and supporting documentation must specify:

(i) The mechanisms to implement mitigation measures to ensure that a project is environmentally sound;

(ii) The legal remedies available to the public to challenge environmental review determinations and enforcement actions;

(iii) The State agency primarily responsible for conducting environmental reviews;

(iv) The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) *Interdisciplinary approach.* The State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other applicable Federal environmental authorities.

(3) *Decision documentation.* The State must fully document the information, processes and premises that influence decisions to:

(i) Proceed with a project contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);

(ii) Proceed or not proceed with a project contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);

(iii) Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project; and

(iv) If a State elects to implement processes for either partitioning an environmental review or CE from environmental review, the State must similarly document these processes in its proposed SERP.

(4) *Public notice and participation.* (i) The State must provide public notice when a CE is issued or rescinded, a FNSI is issued but before it becomes effective, a decision issued 5 years earlier is reaffirmed or revised, and prior to initiating an EIS.

(ii) Except with respect to a public notice of a categorical exclusion or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project will be allowed.

(iii) A public hearing or meeting must be held for all projects except for those having little or no environmental effect.

(5) *Alternatives Consideration.* The State must have evaluation criteria and processes which allow for:

(i) Comparative evaluation among alternatives including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation; and

(ii) Devising appropriate near-term and long-range measures to avoid, minimize or mitigate adverse impacts.

(c) *Alternative State environmental review process.* The State may elect to apply an alternative SERP to non-equivalency section 212 construction projects assisted by the SRF, provided that such process:

(1) Is supported by a legal foundation which establishes the State's authority to review section 212 construction projects;

(2) Responds to other environmental objectives of the State;

(3) Provides for comparative evaluations among alternatives and account for beneficial and adverse consequences to the existing and future environment;

(4) Adequately documents the information, processes and premises that influence an environmental determination; and

(5) Provides for notice to the public of proposed projects and for the opportunity to comment on alternatives and to examine environmental review documents. For projects determined by the State to be controversial, a public hearing must be held.

(d) *EPA approval process.* The RA must review and approve any State "NEPA-like" and alternative procedures to ensure that the requirements for both have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this part.

(e) *Modifications to approved SERPs.* Significant changes to State environmental review procedures must be approved by the RA.

§ 35.3145 Application of other Federal authorities.

(a) *Generally.* The State must agree to comply and to require all recipients of funds "directly made available by" capitalization grants to comply with applicable Federal authorities.

(b) *Informing EPA.* The State must inform EPA when consultation or coordination by EPA with other Federal agencies is necessary to resolve issues regarding compliance with those requirements.

(c) *Civil Rights laws.* All programs, projects and activities of the State capitalization grant recipient must be in compliance with the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

(d) *MBE/WBE requirements.* Requirements for the participation of minority and women owned businesses (MBE/WBEs) will apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the RA will negotiate an overall "fair share" objective with the State for MBE/WBE participation on these SRF funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals. The State may accomplish its fair share objective by requiring certain equivalency projects to undertake

mative steps that will include the wing:

(1) Including small, minority and women's businesses on solicitation lists;

(2) Assuring that small, minority and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority and women's businesses;

(4) Establishing delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women's businesses;

(5) Using the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (d)(1) through (d)(5) of this section.

(e) *MBE/WBE Reporting requirements* The State must submit an MBE/WBE Utilization Report (EPA Form SF 334) within 30 days after the end of each Federal fiscal quarter during ich the State or its subrecipients rd any subagreements.

§ 35.3150 Intended Use Plan (IUP).

(a) *Purpose.* The State must prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support the goals of the SRF. This Intended Use Plan (IUP) must be prepared annually and must be subjected to public comment and review before being submitted to EPA. EPA must receive the IUP prior to the award of the capitalization grant.

(b) *Contents*—(1) *List of Projects.* (i) The IUP must contain a list of publicly owned treatment works projects on the State's project priority list developed pursuant to section 216 of the Act, to be constructed with SRF assistance. This list must include: the name of the community; permit number or other applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance.

(ii) The IUP must also contain a list of the nonpoint source and national estuary protection activities under sections 319 and 320 of the Act that the State expects to fund from its SRF.

(iii) The IUP must provide information in a format and manner that is sistent with the needs of the gional Offices.

(2) Short and long term goals. The IUP must describe the long and short term goals and objectives of the State's water pollution control revolving fund.

(3) Information on the SRF activities to be supported. The IUP must include information on the types of activities including eligible categories of costs to receive assistance, types of assistance to be provided, and SRF policies on setting the terms for the various types of assistance provided by the fund.

(4) Assurances and specific proposals. The IUP must provide assurances and specific proposals on the manner by which the State intends to meet the requirements of the following sections of this part: § 35.3135(c); § 35.3135(d); § 35.3135(e); § 35.3135(f); and § 35.3140.

(5) Criteria and method for distribution of funds.

(i) The IUP must describe the criteria and method established for the distribution of the SRF funds and the distribution of the funds available to the SRF among the various types of assistance the State will offer.

(ii) The IUP must describe the criteria and method the State will use to select section 212 treatment work project priority list and projects or programs to be funded as eligible activities for nonpoint sources and estuary protection management programs.

(c) *Amending the IUP.* The IUP project list may be changed during the year under provisions established in the IUP as long as the projects have been previously identified through the public participation process.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3155 Payments.

(a) *Payment schedule.* The State must include with each application for a capitalization grant a draft payment schedule based on the State's projection of binding commitments in its IUP. The payment schedule and the specific criteria establishing the conditions under which the State may draw cash from its LOC shall be jointly established by the Agency and the State and included in the capitalization grant agreement. Changes to the payment schedule, which may be negotiated during the year, will be effected through an amendment to the grant agreement.

(b) *Estimated disbursements.* With the first application for a capitalization grant, the State shall submit a schedule that reflects, by quarters, the estimated disbursements from that grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year thereafter, the State must provide the Agency with a schedule of estimated disbursements for the following Federal fiscal year. The State must advise the Agency when significant changes from the schedule of estimated disbursements are anticipated. This schedule must be developed in conformity with the procedures applicable to cash draws in § 35.3160 and must be at a level of detail sufficient to allow the Agency and the State to jointly develop and maintain a forecast of cash draws.

(c) *Timing of payments.* Payments to the LOC from a particular grant will begin in the quarter in which the grant is awarded and will end no later than the earlier of eight quarters after the capitalization grant is awarded or twelve quarters after advices of allowances are issued to the Regions.

(d) *General payment and cash draw rules.* (1) Except as described in § 35.3160(e) and § 35.3160(g), payments will be based on the State's schedule of binding commitments.

(2) The SRF or assistance recipient must first incur a cost, but not necessarily disburse funds for that cost, on an activity for which the State has entered into a binding commitment, in order to draw cash.

(3) Cash draws will be available only up to the amount of payments made.

(4) For loans or for refinancing or purchasing of municipal debt, planning, design and associated pre-building costs that are within the scope of a project built after March 7, 1985, may be included in the assistance agreement regardless of when they were incurred, provided these costs are in conformity with title VI of the Act. The State may draw cash for these incurred pre-building costs immediately upon executing an assistance agreement.

(5) A State may draw cash from the LOC equal to the proportional Federal share at which time the State will provide its proportional share. The Federal proportional share will be 83⅓ percent of incurred costs and the State's proportional share will be 16⅔ percent of the incurred costs, except as described below.

(i) Where the State provides funds in excess of the required 20 percent match, the proportional Federal share drawn from the LOC will be the ratio of Federal funds in the capitalization grant to the sum of the capitalization grant and the State funds. Alternatively, the State may identify a group of activities approximately equal to 120 percent of the grant amount, and draw cash from the LOC for 83⅓ percent of the incurred costs of the identified activities.

(ii) The Federal proportional share may exceed 83⅓ percent where a State is given credit for its match amount as a result of funding activities in prior years

(but after March 7, 1985), or for banking excess match in the SRF in prior years and disbursing these amounts prior to drawing cash. If the entire amount of the State's required match has been disbursed in advance, the Federal proportional share would be 100 percent.

§ 35.3160 Cash draw rules.

(a) *Loans.* The State may draw cash from the LOC when the SRF receives a request from a loan recipient, based on incurred costs, including prebuilding and building costs.

(b) *Refinance or purchase of municipal debt.* (1) Cash draw for completed construction. Except as indicated in paragraph (b)(2) of this section, cash draws shall be made at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c), and up to the portion of the LOC committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs.

(2) The State may immediately draw cash for up to five percent of each fiscal year's capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt.

(3) Projects or portions of projects not constructed. The State may draw cash based on incurred construction costs, as set forth in § 35.3160(a).

(4) Incremental disbursement bonds. For the purchase of incremental disbursement bonds from local governments, cash draws will be based on a schedule that coincides with the rate at which construction related costs are expected to be incurred for the project.

(c) *Purchase of insurance.* The State may draw cash to purchase insurance as premiums are due.

(d) *Guarantees and security for bonds.* (1) Cash draw in the event of default. In the event of an imminent default in debt service payments on the guaranteed/secured debt, the State can draw cash immediately up to the total amount of the LOC committed to the guarantee/security. If a balance remains in the guarantee portion of the LOC reserve after the default is covered, the State must negotiate a revised schedule for the remaining amount of the guarantee/security.

(2) Cash draw in the absence of default. (i) The State can draw cash up to the amount of the LOC dedicated for the guarantee or security in accordance with a schedule based on the national title II annual outlay rate (Yr 1: 7%; Yr 2: 35%; Yr 3: 28%; Yr 4: 20%; Yr 5: 12%), or actual construction cost. In the latter case, the amount of the cash draw would be the actual construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bond issue.

(ii) In addition, in the case of a security the State can identify a group of projects whose value equals approximately the total of that portion of the LOC and the State match dedicated as a security. The State can then draw cash based on the incurred construction costs of the selected projects only, multiplied by the ratio of the Federal portion of the security to the entire security.

(3) *Aggressive leveraging exception.* Where the cash draw rules discussed in § 35.3160(d) would significantly frustrate a State's program, the Agency may permit an exception to these cash draw rules and provide for a more accelerated cash draw, where the State can demonstrate that:

(i) There are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) The absence of cash on an accelerated basis will substantially delay these projects;

(iii) If accelerated cash draws are allowed, the SRF will provide substantially more assistance; and

(iv) The long term viability of the State program to meet water quality needs will be protected.

(4) *Cash draw limitation.* When the LOC is used for securing State issued bonds, cash draws cannot be made at a rate greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c). Exceptions to this limitation are in cases of default (see § 35.3160(d)(1)) and where cash draws are based on construction costs for all projects, as in § 35.3160(d)(2)(i).

(e) *Administrative expenses.* (1) Payments. One payment will be made at the time of the grant, based on the portion of the LOC estimated to be used for administrative expenses.

(2) Cash draw. The State can draw cash based on a schedule that coincides with the rate at which administrative expenses will be incurred, up to that portion of the LOC dedicated to administrative expenses.

(f) *Withholding payments.* If a State fails to take corrective action in accordance with section 605 of the Act, the Agency shall withhold payments to the SRF. Once a payment has been made by the Agency, that payment and cash draws from that payment will not be subject to withholding because of a State's failure to take corrective action.

§ 35.3165 Reports and audits.

(a) *Annual report.* The State must provide an Annual Report to the RA beginning the first fiscal year after it receives payments under title VI. The State should submit this report to the RA according to the schedule established in the grant agreement.

(b) *Matters to establish in the annual report.* In addition to the requirements in section 606(d) of the Act, in its annual report the State must establish that it has: (1) Reviewed all SRF funded section 212 projects in accordance with the approved environmental review procedures;

(2) Deposited its match on or before the date on which each quarterly grant payment was made;

(3) Assured compliance with the requirements of § 35.3135(f);

(4) Made binding commitments to provide assistance equal to 120 percent of the amount of each grant payment within one year after receiving the grant payment pursuant to § 35.3135(c);

(5) Expended all funds in an expeditious and timely manner pursuant to § 35.3135(d); and

(6) First used all funds as a result of capitalization grants to assure maintenance of progress toward compliance with the enforceable requirements of the Act pursuant to § 35.3135(e).

(c) *Annual review.* (1) Purpose. The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP and Annual Report, and to determine compliance with the terms of the capitalization grant agreement. The RA will complete the annual review according to the schedule established in the grant agreement.

(2) Records access. After reasonable notice by the RA, the State or assistance recipient must make available to the EPA such records as the RA reasonably requires to review and determine State compliance with the requirements of title VI. The RA may conduct onsite visits as needed to provide adequate programmatic review.

(d) *Annual audit.* (1) At least once a year the RA (through the Office of the Inspector General) will conduct, or require the State to have independently conducted, a financial and compliance audit of the SRF and the operations of the SRF. If the State is required to have an independently conducted audit performed, the State may designate an independent auditor of the State to carry out the audit or may contractually procure the service.

(2) The auditor can be a certified public accountant, a public accountant

licensed on or before December 31, 1970, or a governmental auditor who meets the qualification standards (Government Auditing Standards). In addition, the auditor must meet the independence standard as enumerated by the General Accounting Office and American Institute of Certified Public Accountants. The Office of the Inspector General may arrange for an EPA audit if the State fails to conduct the audit or if the State's review is otherwise unsatisfactory.

(3) The audit report required under section 606(b) must contain an opinion on the financial statements of the SRF and its internal controls, and a report on compliance with title VI.

(4) The audit report must be completed within one year of the end of the appropriate accounting period and submitted to the Office of the Inspector General within 30 days of completion. In cases of State conducted audits, the State will be notified within 90 days as to the acceptability of the audit report and its findings. Audits may be done in conjunction with the Single Audit Act.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3170 Corrective action.

(a) *Causes.* If the RA determines that the State has not complied with requirements under title VI, the RA will notify the State of such noncompliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet conditions or assurances or invalid certifications, is grounds for a finding of noncompliance. In addition, if the State does not manage the SRF in a financially sound manner (e.g. allows consistent and substantial failures of loan repayments), the RA may take corrective action as provided under this section.

(b) *RA's course of action.* In making a determination of noncompliance with the capitalization grant agreement and devising the corrective action, the RA will identify the nature and cause of the problems. The State's corrective action must remedy the specific instance of noncompliance and adjust program management to avoid noncompliance in the future.

(c) *Consequences for failure to take corrective action.* If within 60 days of receipt of the noncompliance notice, a State fails to take the necessary actions to obtain the results required by the RA, or to provide an acceptable plan to achieve the results required, the RA shall withhold payments to the SRF until the State has taken acceptable actions. If the State fails to take the necessary corrective action deemed adequate by the RA within twelve months of receipt of the original notice, any withheld payments shall be deobligated and reallotted to other States.

(d) *Releasing payments.* Once the State has taken the corrective action deemed necessary and adequate by the RA, the withheld payments will be released and scheduled payments will recommence.

Appendix A—Criteria for evaluating a State's proposed NEPA-like process

The following criteria will be used by the RA to evaluate a proposed SERP.

(A) *Legal foundation.* Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exists.

(B) *Interdisciplinary approach.* The availability of expertise either in-house or otherwise accessible to the State Agency.

(C) *Decision documentation.* A description of a documentation process adequate to explain the basis for decisions to the public.

(D) *Public notice and participation.* A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) *Consider alternatives.* The extent to which the SERP will adequately consider:

(1) Designation of a study area comparable to the final system;

(2) A range of feasible alternatives, including the no action alternative;

(3) Direct and indirect impacts;

(4) Present and future conditions;

(5) Land use and other social parameters including recreation and open-space considerations;

(6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;

(7) Cumulative impacts including anticipated community growth (residential, commercial, institutional and industrial) within the project study area; and

(8) Other anticipated public works projects including coordination with such projects.

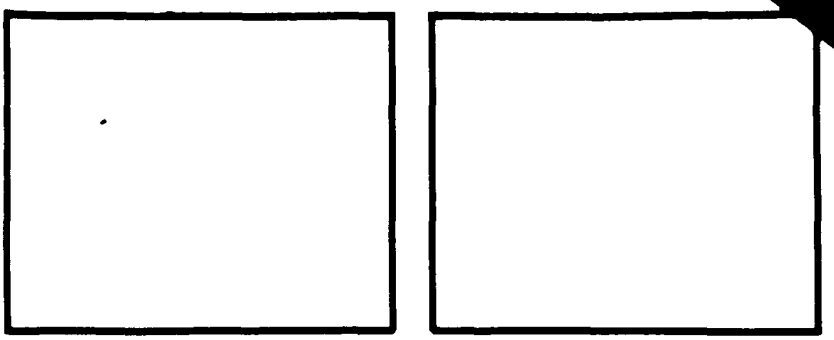
[FR Doc. 90-5842 Filed 3-16-90; 8:45 am]

BILLING CODE 6560-50-M

Attachment 2

ATTACHMENT #2

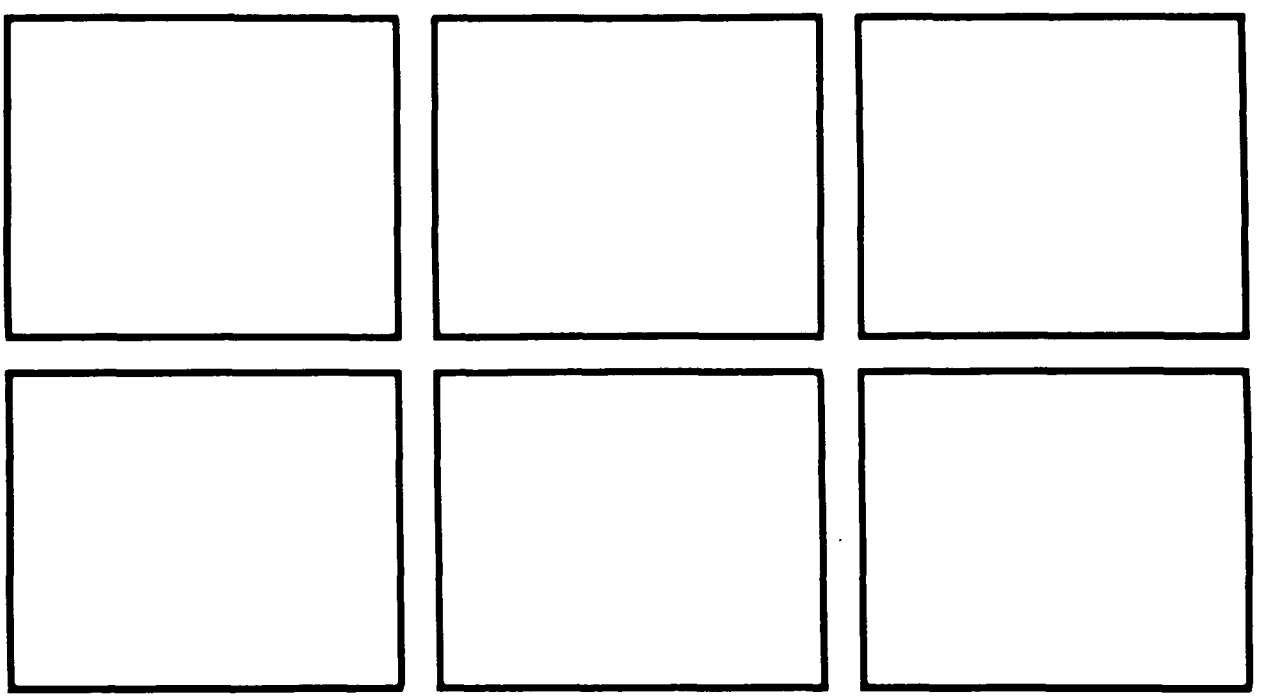
WORKING WITH SECTION 106



36 CFR Part 800:

Protection of Historic Properties

Regulations of the
Advisory Council on Historic Preservation
Governing the Section 106 Review Process



Advisory Council on Historic Preservation

Effective October 1, 1986

36 CFR PART 800: PROTECTION OF HISTORIC PROPERTIES

The italicized marginal annotations are intended to aid the reader in locating regulatory topics. They are not a part of the formal regulations.

The text immediately below was published in the Federal Register *on September 2, 1986 (51 FR 31115), as 36 CFR Part 800, "Protection of Historic Properties." These regulations govern the Section 106 review process established by the National Historic Preservation Act of 1966, as amended.*

SUBPART A—BACKGROUND AND POLICY

800.1 Authorities, purposes, and participants.

What §106 requires of Federal agencies

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into acount the effects of the agency's undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the Section 106 process.

What §110(f) requires of Federal agencies

Accommodation of historic preservation concerns and needs of Federal undertakings

(b) Purposes of the Section 106 process. The Council seeks through the Section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties.

Early integration of §106 into project planning

Integration of the Section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the Section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special Section 106 procedures suited to the agency's needs.

§106 participants

(c) Participants in the Section 106 process.

Consulting parties

(1) *Consulting parties.* Consulting parties are the primary participants in the Section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

Federal agency's general responsibilities

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with Section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for Section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the Section 106 process as appropriate in the manner set forth below.

SHPO's general responsibilities

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the Section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in Section 800.7 of these regulations.

Council's general responsibilities

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

Interested persons' participation

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of Section 106, they may invite that person to become a consulting party. Interested persons may include:

Local governments' participation

(i) *Local governments.* Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no

such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to Section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

Federal applicants' participation

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under Section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the Section 106 process in the manner prescribed in these regulations.

Indian tribes' participation

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

Public participation

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the Section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the Section 106 process.

Definitions

800.2 Definitions.

"Act"

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470-470w-6.

"Agency Official"

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with Section 106 and Section 110(f) in accordance with law.

"Area of potential effects"

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

"Council"

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

"Historic property"

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

"Indian lands"

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

"Indian tribe"

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §1601, *et seq.*

"Interested person"

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

"Local government"

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

"National Historic Landmark"

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

"National Register"

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

"National Register Criteria"

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

"Secretary"

(m) "Secretary" means the Secretary of the Interior.

"SHPO"

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

"Undertaking"

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

How the §106 process works

SUBPART B—THE SECTION 106 PROCESS

800.3 General.

Scope of the regulations; alternative methods of meeting §106 requirements

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the Section 106 process. Alternative methods of meeting Section 106 obligations are found in Section 800.7, governing review of untertakings in States that have entered into agreements with the Council for Section 106 purposes, and Section 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

Procedural flexibility

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106 of the Act and these regulations are met.

Timing of the §106 process

(c) Timing. Section 106 requires the Agency Official to complete the Section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with Section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the Section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the Section 106 process that is consistent with the planning and approval schedule for the undertaking.

Allowance for nondestructive planning before the §106 process is completed

Steps of the §106 process

800.4 Identifying historic properties.

Agency's determination of what information will be needed to complete the §106 process

(a) Assessing information needs.

(1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

Agency's location of historic properties in the project area

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of Section 110(a)(2) of the Act.

Agency's evaluation of whether properties found are "historic"

(c) Evaluating historical significance.

(1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

Agency/SHPO agreement about National Register eligibility of properties found

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for Section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for Section 106 purposes.

Disagreement about National Register eligibility of properties found

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

Agency's actions if no historic properties are found

(d) When no historic properties are found. If the Agency Official determines in accordance with Sections 800.4(a)-(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the Section 106 process.

Agency's actions if historic properties are found

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency Official shall assess the effects in accordance with Section 800.5.

Agency's assessment of project effects on historic properties found

800.5 Assessing effects.

Agency's use of Criteria of Effect

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (Section 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

Agency's actions if no effect is found

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the finding, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the Section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in Section 800.5(c) are followed.

Agency's use of Criteria of Adverse Effect

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (Section 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

Agency's actions if effects are not adverse

(d) When the effect is not considered adverse.

(1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (Section 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the Section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

Agency's actions if effects are adverse

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

Consultation to avoid or reduce adverse effects; Council participation is optional

Invitation to interested persons to join in consultation

(1) *Involving interested persons.* Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with Section 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

Documentation needed for consultation

(2) *Documentation.* The Agency Official shall provide each of the consulting parties with the documentation set forth in Section 800.8(b) and such other documentation as may be developed in the course of consultation.

Public notification about consultation

(3) *Informing the public.* The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

Memorandum of Agreement (MOA) reached through consultation; MOA signatories

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Section 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

Amendments to MOA's

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with Section 800.6.

Ending consultation

(6) *Ending consultation.* The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, the State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with Section 800.6(b) and notify all other consulting parties of its requests.

800.6 Affording the Council an opportunity to comment.

Council review of an MOA

(a) **Review of a Memorandum of Agreement.**

Documentation for MOA review

(1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in Section 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the Section 106 process, and inform all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the Section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with Section 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

Council comment, absent an MOA

(b) **Comment when there is no agreement.**

Documentation for Council comment, absent an MOA

(1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in Section 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

Additional information, onsite inspection, public meeting, absent an MOA

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

How the Council provides comments, absent an MOA

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

Agency's response to Council comment

(c) Response to Council comment.

(1) When a Memorandum of Agreement becomes final in accordance with Section 800.6(a)(1)(i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's Section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with Section 800.6.

Failure to carry out terms of an MOA

Agency's consideration of Council comment

(2) When the Council has commented pursuant to Section 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

Agency actions that preempt reasonable opportunity for Council comment

(d) Foreclosure of the Council's opportunity to comment.

(1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

Public objection to agency determinations about whether historic properties or effects are present

(e) Public requests to the Council.

(1) When requested by any person, the Council shall consider an Agency Official's finding under Sections 800.4(b), 800.4(c), 800.4(d), or 800.5(b) and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

Substitute review processes developed by States for §106 review

800.7 Agreements with States for Section 106 reviews.

(a) Establishment of State agreements.

(1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to Section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of Section 106.

Council review of a proposed substitute State review process

(2) The Council, in analyzing a State's review process pursuant to Section 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive Orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the Section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the Section 106 process and the capability to administer a comparable process at the State level.

SHPO/Council consultation about a proposed substitute State review process

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's "Standards and Guidelines for Archeology and Historic Preservation."

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the *Federal Register* and make copies of the State agreement available to all Federal agencies.

Agency's use of substitute State review processes

(b) Review of undertakings when a State agreement is in effect.

(1) When a State agreement under Section 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with Sections 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

Monitoring or terminating substitute State review processes

(c) Monitoring and termination of State agreements.

(1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under Section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) An agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to Section 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

800.8 Documentation requirements.

Documentation for finding of no adverse effect

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the Criteria of Adverse Effect were found inapplicable;

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

Documentation required for consultation

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

Documentation required for submitting a signed MOA for Council review

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with Section 800.6(a)(1), the documentation, in addition to that specified in Section 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

Documentation required for requesting written Council comment, absent an MOA

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

800.9 Criteria of Effect and Adverse Effect.

Criteria of Effect

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of the property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

Exceptions to the Criteria of Adverse Effect

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings"; or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

SUBPART C—SPECIAL PROVISIONS

Special agency requirements for National Historic Landmarks

800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Sections 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under Section 800.5(e) shall include the Council;

(b) The Council may request the Secretary under Section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

Discovery of historic properties after a project has begun

800.11 Properties discovered during implementation of an undertaking.

Prior agency planning for discoveries

(a) Planning for discoveries.

When the Agency Official's identification efforts in accordance with Section 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with Section 800.5.

(b) Federal agency responsibilities.

(1) When an Agency Official has completed the Section 106 process and prepared a plan in accordance with Section 800.11(a), the Agency Official shall satisfy the requirements of Section 106 concerning properties discovered during implementation of an undertaking by following the plan.

Agency responsibilities absent a plan for discoveries

(2) When an Agency Official has completed the Section 106 process without preparing a plan in accordance with Section 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with Section 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to Section 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. §§ 469 (a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

Council comments when historic properties are discovered after a project has begun

(c) Council Comments.

(1) When comments are requested pursuant to Section 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Offical elects to comply with Section 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with Section 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

Agency actions to determine National Register eligibility of newly discovered properties

(d) Other considerations.

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of Section 106.

Discovery of properties on Indian lands

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

Waiver of §106 requirements during disasters or declared emergencies

800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR § 78.2, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and Section 800.12(a) does not apply, the Agency Official may satisfy Section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, Section 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with Sections 800.4 through 800.6.

30-day timeframe for §106 waiver in disaster situations

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with Sections 800.4 through 800.6.

Agency's use of Programmatic Agreements

800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's Section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments, through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

Examples of projects or programs suitable for Programmatic Agreements

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

Agency/Council consultation to reach a Programmatic Agreement

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

Public involvement in Programmatic Agreement consultation

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

Signatories of a Programmatic Agreement

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

Effect of a Programmatic Agreement

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

Public notification of a Programmatic Agreement

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the *Federal Register* and make copies readily available to the public.

Failure to carry out terms of a Programmatic Agreement

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Sections 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Coordination of §106 with other authorities

800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

Coordination with NEPA environmental studies

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

Multipurpose determinations and agreements

(b) Designing determinations and agreements to satisfy the terms not only of Section 106 and these regulations, but also the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, Section 110 of the National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

Multipurpose studies and surveys

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

Coordinated public involvement

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

Agency's use of counterpart regulations to substitute for 36 CFR Part 800

800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the Section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with Section 106.

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Attachment 3

ATTACHMENT #3

federal register

Thursday
September 29, 1983

Part IV

Department of the Interior

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

DEPARTMENT OF THE INTERIOR

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

DATE: These Standards and Guidelines are effective on September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Aten, Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240 (202-343-9500). A Directory of Technical Information listing other sources of supporting information is available from the National Park Service.

SUPPLEMENTARY INFORMATION: The Standards and Guidelines are prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the National Historic Preservation Act of 1966, as amended. State Historic Preservation Officers; Federal Preservation Officers including those of the Department of Agriculture, Department of Defense, Smithsonian Institution and General Services Administration; the Advisory Council on Historic Preservation; the National Trust for Historic Preservation; and other interested parties were consulted during the development of the Standards and Guidelines; additional consultation with these agencies will occur as the Standards and Guidelines are tested during their first year of use.

Purpose

The proposed Standards and the philosophy on which they are based result from nearly twenty years of intensive preservation activities at the Federal, State, and local levels.

The purposes of the Standards are:

To organize the information gathered about preservation activities.

To describe results to be achieved by Federal agencies, States, and others when planning for the identification, evaluation, registration and treatment of historic properties.

To integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve our nation's cultural heritage.

Uses of the Standards

The following groups or individuals are encouraged to use these Standards:

Federal agency personnel responsible for cultural resource management pursuant to Section 110 of the National Historic Preservation Act, as amended, in areas under Federal jurisdiction. A separate series of guidelines advising Federal agencies on their specific historic preservation activities under Section 110 is in preparation.

State Historic Preservation Offices responsible under the National Historic Preservation Act, as amended, for making decisions about the preservation of historic properties in their States in accordance with appropriate regulations and the Historic Preservation Fund Grants Management Manual. The State Historic Preservation Offices serve as the focal point for preservation planning and act as a central state-wide repository of collected information.

Local governments wishing to establish a comprehensive approach to the identification, evaluation, registration and treatment of historic properties within their jurisdictions.

Other individuals and organizations needing basic technical standards and guidelines for historic preservation activities.

Organization

This material is organized in three sections: Standards; Guidelines; and recommended technical sources, cited at the end of each set of guidelines. Users of this document are expected to consult the recommended technical sources to obtain guidance in specific cases.

Review of the Standards and Guidelines

The Secretary of the Interior's Standards for Rehabilitation have recently undergone extensive review and their guidelines made current after 5 years of field use. Users and other interested parties are encouraged to submit written comments on the utility of these Standards and Guidelines except for the Rehabilitation Standards mentioned above. This edition will be thoroughly reviewed by the National Park Service (including consultation with Federal and State agencies), after the end of its first full year of use and any necessary modifications will be made. Subsequent reviews are anticipated as needed. Comments should be sent to Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

Contents

Secretary of the Interior's Standards for Preservation Planning

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

—Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.

—If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.

—Preservation planning includes public participation. The planning process should provide a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early

and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

Standard I. Preservation Planning Establishes Historic Contexts

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort.

The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

Secretary of the Interior's Guidelines for Preservation Planning

Introduction

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Managing the Planning Process
Developing Historic Contexts
Developing Goals for a Historic Context
Integrating Individual Historic Contexts—Creating the Preservation Plan
Coordinating with Management Frameworks
Recommended Sources of Technical Information

Managing the Planning Process

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

Implementing the Process

The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

Review and Revision

Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

Public Participation

The success of the preservation planning process depends on how well it solicits and integrates the views of various groups. The planning process is directed first toward resolving conflicts in goals for historic preservation, and second toward resolving conflicts between historic preservation goals and other land-use planning goals. Public participation is intergral to this approach and includes at least the following actions:

1. Involving historians, architectural historians, archeologists, historical architects, folklorists and persons from related discipline to define, review and revise the historic contexts, goals and priorities;

2. Involving interested individuals, organizations and communities in the planning area in identifying the kinds of historic properties that may exist and suitable protective measures;

3. Involving prospective users of the preservation plan in defining issues, goals and priorities;

4. Providing for coordination with other planning efforts at local, state, regional and national levels, as appropriate; and

5. Creating mechanisms for identifying and resolving conflicts about historic preservation issues.

The development of historic contexts, for example, should be based on the professional input of all disciplines involved in preservation and not be limited to a single discipline. For prehistoric archeology, for example, data from fields such as geology, geomorphology and geography may also be needed. The individuals and organizations to be involved will depend, in part, on those present or interested in the planning area.

Documents Resulting from the Planning Process

In most cases, the planning process produces documents that explain how the process works and that discuss the historic contexts and related goals and priorities. While the process can operate in the absence of these documents, planning documents are important because they are the most effective means of communicating the process and its recommendations to others. Planning documents also record decisions about historic properties.

As various parts of the planning process are reviewed and revised to reflect current information, related documents must also be updated. Planning documents should be created in a form that can be easily revised. It is also recommended that the format, language and organization of any documents or other materials (visual aids, etc.) containing preservation planning information meet the needs of prospective users.

Developing Historic Contexts

General Approach

Available information about historic properties must be divided into manageable units before it can be useful for planning purposes. Major decisions about identifying, evaluating, registering and treating historic properties are most reliably made in the context of other related properties. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period. A single historic context describes one or more aspects of the historic development of an area, considering history, architecture, archeology, engineering and culture; and identifies the significant patterns that individual historic properties represent, for example, Coal Mining in Northeastern Pennsylvania between 1860 and 1930. A set of historic contexts is a comprehensive summary of all aspects of the history of the area.

The historic context is the cornerstone of the planning process. The goal of preservation planning is to identify, evaluate, register and treat the full range of properties representing each historic context, rather than only one or two types of properties. Identification activities are organized to ensure that research and survey activities include properties representing all aspects of the historic context. Evaluation uses the historic context as the framework within which to apply the criteria for evalution to specific properties or property types. Decisions about treatment of properties are made with the goal of treating the range of properties in the context. The use of historic contexts in organizing major preservation activities ensures that those activities result in the preservation of the wide variety of properties that represent our history, rather than only a small, biased sample of properties.

Historic contexts, as theoretical constructs, are linked to actual historic properties through the concept of property type. Property types permit the development of plans for identification, evaluation and treatment even in the absence of complete knowledge of individual properties. Like the historic context, property types are artifical constructs which may be revised as necessary.

Historic contexts can be developed at a variety of scales appropriate for local, State and regional planning. Given the probability of historic contexts overlapping in an area, it is important to coordinate the development and use of contexts at all levels. Generally, the State Historic Preservation Office possesses the most complete body of information about historic properties and, in practice, is in the best position to perform this function.

The development of historic contexts generally results in documents that describe the prehistoric processes or patterns that define the context. Each of the contexts selected should be developed to the point of identifying important property types to be useful in later preservation decision-making. The amount of detail included in these summaries will vary depending on the level (local, state, regional, or national) at which the contexts are developed and on their intended uses. For most planning purposes, a synopsis of the written description of the historic context is sufficient.

Creating a Historic Context

Generally, historic contexts should not be constructed so broadly as to include all property types under a single historic context or so narrowly as to contain only one property type per historic context. The following procedures should be followed in creating a historic context.

1. Identify the concept, time period and geographical limits for the historic context

Existing information, concepts, theories, models and descriptions should be used as the basis for defining historic contexts. Biases in primary and secondary sources should be identified and accounted for when existing information is used in defining historic contexts.

The identification and description of historic contexts should incorporate contributions from all disciplines involved in historic preservation. The chronological period and geographical area of each historic context should be defined after the conceptual basis is established. However, there may be exceptions, especially in defining prehistoric contexts where drainage systems or physiographic regions often are outlined first. The geographical boundaries for historic contexts should not be based upon contemporary political, project or other contemporary boundaries if those boundaries do not coincide with historical boundaries. For example, boundaries for prehistoric contexts will have little relationship to contemporary city, county or state boundaries.

2. Assemble the existing information about the historic context

a. *Collecting information:* Several kinds of information are needed to construct a preservation plan. Information about the history of the area encompassed by the historic context must be collected, including any information about historic properties that have already been identified. Existing survey or inventory entries are an important source of information about historic properties. Other sources may include literature on prehistory, history, architecture and the environment; social and environmental impact assessments; county and State land use plans; architectural and folklife studies and oral histories; ethnographic research; State historic inventories and registers; technical reports prepared for Section 106 or other assessments of historic properties; and and direct consultation with individuals and organized groups.

In addition, organizations and groups that may have important roles in defining historic contexts and values

should be identified. In most cases a range of knowlegeable professionals drawn from the preservation, planning and academic communities will be available to assist in defining contexts and in identifying sources of information. In other cases, however, development of historic contexts may occur in areas whose history or prehistory has not been extensively studied. In these situations, broad general historic contexts should be initially identified using available literature and expertise, with the expectation that the contexts will be revised and subdivided in the future as primary source research and field survey are conducted. It is also important to identify such sources of information as existing planning data, which is needed to establish goals for identification, evaluation, and treatment, and to identify factors that will affect attainment of those goals.

The same approach for obtaining information is not necessarily desirable for all historic contexts. Information should not be gathered without first considering its relative importance to the historic context, the cost and time involved, and the expertise required to obtain it. In many cases, for example, published sources may be used in writing initial definitions of historic contexts; archival research or field work may be needed for subsequent activities.

b. *Assessing information:* All information should be reviewed to identify bias in historic perspective, methodological approach, or area of coverage. For example, field surveys for archeological sites may have ignored historic archelolgical sites, or county land use plans may have emphasized only development goals.

3. Synthesize information

The information collection and analysis results in a written narrative of the historic context. This narrative provides a detailed synthesis of the data that have been collected and analyzed. The narrative covers the history of the area from the chosen perspective and identifies important patterns, events, persons or cultural values. In the process of identifying the important patterns, one should consider:

a. Trends in area settlement and development, if relevant;

b. Aesthetic and artistic values embodied in architecture, construction technology or craftsmanship;

c. Research values or problems relevant to the historic context; social and physical sciences and humanities; and cultural interests of local communities; and

d. Intangible cultural values of ethnic groups and native American peoples.

4. Define property types

A property type is a grouping of individual properties based on shared physical or associative characteristics. Property types link the ideas incorporated in the theoretical historic context with actual historic properties that illustrate those ideas. Property types defined for each historic context should be directly related to the conceptual basis of the historic context. Property types defined for the historic context "Coal Mining in Northeastern Pennsylvania, 1860–1930" might include coal extraction and processing complexes; railroad and canal transportation systems; commercial districts; mine workers' housing; churches, social clubs and other community facilities reflecting the ethnic origins of workers; and residences and other properties associated with mine owners and other industrialists.

a. *Identify property types:* The narrative should discuss the kinds of properties expected within the geographical limits of the context and group them into those property types most useful in representing important historic trends.

Generally, property types should be defined after the historic context has been defined. Property types in common usage ("Queen Anne houses," "mill buildings," or "stratified sites") should not be adopted without first verifying their relevance to the historic contexts being used.

b. *Characterize the locational patterns of property types:* Generalizations about where particular types of properties are likely to be found can serve as a guide for identification and treatment. Generalizations about the distribution of archeological properties are frequently used. The distribution of other historic properties often can be estimated based on recognizable historical, environmental or cultural factors that determined their location. Locational patterns of property types should be based upon models that have an explicit theoretical or historical basis and can be tested in the field. The model may be the product of historical research and analysis ("Prior to widespread use of steam power, mills were located on rivers and streams able to produce water power" or "plantation houses in the Mississippi Black Belt were located on sandy clay knolls"), or it may result from sampling techniques. Often the results of statistically valid sample surveys can be used to describe the locational patterns of a representative portion of properties belonging to a particular property type. Other surveys can also provide a basis for suggesting locational patterns if a diversity of historic properties was recorded and a variety of environmental zones was inspected. It is likely that the identification of locational patterns will come from a combination of these sources. Expected or predicted locational patterns of property types should be developed with a provision made for their verification.

c. *Characterize the current condition of property types:* The expected condition of property types should be evaluated to assist in the development of identification, evaluation and treatment strategies, and to help define physical integrity thresholds for various property types. The following should be assessed for each property type:

(1) Inherent characteristics of a property type that either contribute to or detract from its physical preservation. For example, a property type commonly constructed of fragile materials is more likely to be deteriorated than a property type constructed of durable materials; structures whose historic function or design limits the potential for alternative uses (water towers) are less likely to be reused than structures whose design allows a wider variety of other uses (commercial buildings or warehouses).

(2) Aspects of the social and natural environment that may affect the preservation or visibility of the property type. For example, community values placed on certain types of properties (churches, historic cemeteries) may result in their maintenance while the need to reuse valuable materials may stimulate the disappearance of properties like abandoned houses and barns.

It may be most efficient to estimate of the condition of property types based on professional knowledge of existing properties and field test these estimates using a small sample of properties representative of each type.

5. Identify information needs

Filling gaps in information is an important element of the preservation plan designed for each historic context. Statements of the information needed should be as specific as possible, focusing on the information needed, the historic context and property types it applies to, and why the information is needed to perform identification, evaluation, or treatment activities.

Developing Goals for a Historic Context

Developing Goals

A goal is a statement of preferred preservation activities, which is

generally stated in terms of property types.

The purpose of establishing preservation goals is to set forth a "best case" version of how properties in the historic context should be identified, evaluated, registered and treated. Preservation goals should be oriented toward the greatest possible protection of properties in the historic context and should be based on the principle that properties should be preserved in place if possible, through affirmative treatments like rehabilitation, stabilization or restoration. Generally, goals will be specific to the historic context and will often be phrased in terms of property types. Some of these goals will be related to information needs previously identified for the historic context. Collectively, the goals for a historic context should be a coherent statement of program direction covering all aspects of the context.

For each goal, a statement should be prepared identifying:

1. The goal, including the context and property types to which the goal applies and the geographical area in which they are located;
2. The activities required to achieve the goal;
3. The most appropriate methods or strategies for carrying out the activities;
4. A schedule within which the activities should be completed; and
5. The amount of effort required to accomplish the goal, as well as a way to evaluate progress toward its accomplishment.

Setting priorities for goals

Once goals have been developed they need to be ranked in importance. Ranking involves examining each goal in light of a number of factors.

1. General social, economic, political and environmental conditions and trends affecting (positively and negatively) the identification, evaluation, registration and treatment of property types in the historic context.

Some property types in the historic context may be more directly threatened by deterioration, land development patterns, contemporary use patterns, or public perceptions of their value, and such property types should be given priority consideration.

2. Major cost or technical considerations affecting the identification, evaluation and treatment of property types in the historic context.

The identification or treatment of some property types may be technically possible but the cost prohibitive; or techniques may not currently perfected (for example, the identification of submerged sites or objects, or the evaluation of sites containing material for which dating techniques are still being developed).

3. Identification, evaluation, registration and treatment activities previously carried out for property types in the historic context.

If a number of properties representing one aspect of a historic context have been recorded or preserved, treatment of additional members of that property type may receive lower priority than treatment of a property type for which no examples have yet been recorded or preserved. This approach ensures that the focus of recording or preserving all elements of ths historic context is retained, rather than limiting activities to preserving properties representing only some aspects of the context.

The result of considering the goals in light of these concerns will be a list of refined goals ranked in order of priority.

Integrating Individual Contexts—Creating the Preservation Plan

When historic contexts overlap geographically, competing goals and priorities must be integrated for effective preservation planning. The ranking of goals for each historic context must be reconciled to ensure that recommendations for one context do not contradict those for another. This important step results in an overall set of priorities for several historic contexts and a list of the activities to be performed to achieve the ranked goals. When applied to a specific geographical area, this is the preservation plan for that area.

It is expected that in many instances historic contexts will overlap geographically. Overlapping contexts are likely to occur in two combinations—those that were defined at the same scale (i.e., textile development in Smithtown 1850–1910 and Civil War in Smithtown 1855–1870) and those defined at different scales (i.e., Civil War in Smithtown and Civil War in the Shenandoah Valley). The contexts may share the same property types, although the shared property types will probably have different levels of importance, or they may group the same properties into different property types, reflecting either a different scale of analysis or a different historical perspective.

As previously noted, many of the goals that the formulated for a historic context will focus on the property types defined for that context. Thus it is critical that the integration of goals include the explicit consideration of the potential for shared property type membership by individual properties. For example, when the same property types are used by two contexts, reconciling the goals will require weighing the level of importance assigned to each property type. The degree to which integration of historic contexts must involve reconciling property types may be limited by the coordinated development of historic contexts used at various levels.

Integration with Management Frameworks

Preservation goals and priorities are adapted to land units through integration with other planning concerns. This integration must involve the resolution of conflicts that arise when competing resources occupy the same land base. Successful resolution of these conflicts can often be achieved through judicious combination of inventory, evaluation and treatment activities. Since historic properties are irreplaceable, these activities should be heavily weighted to discourage the destruction of significant properties and to be compatible with the primary land use.

Recommended Sources of Technical Information

Resource Protection Planning Process. State and Plans Grants Division, 1980. Washington, D.C. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Outlines a step-by-step approach to implementing the resource protection planning process.

Resource Protection Planning Process Case Studies. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Reports prepared by State Historic Preservation Offices and other using the planning process.

Planning Theory. Andreas Faludi, 1980. Oxford: Pergamon Press. Constructs a model of planning using concepts borrowed from general systems theory.

SECRETARY OF THE INTERIOR'S STANDARDS FOR IDENTIFICATION

Identification activities are undertaken to gather information about historic properties in an area. The scope of these activities will depend on: existing knowledge about properties; goals for survey activities developed in the planning process; and current management needs.

Standard I. Identification of Historic Properties Is Undertaken to the Degree Required To Make Decisions

Archival research and survey activities should be designed to gather the information necessary to achieve defined preservation goals. The

objectives, chosen methods and techniques, and expected results of the identification activities are specified in a research design. These activities may include archival research and other techniques to develop historic contexts, sampling an area to gain a broad understanding of the kinds of properties it contains, or examining every property in an area as a basis for property specific decisions. Where possible, use of quantitative methods is important because it can produce an estimate, whose reliability may be assessed, of the kinds of historic properties that may be present in the studied area. Identification activities should use a search procedure consistent with the management needs for information and the character of the area to be investigated. Careful selection of methods, techniques and level of detail is necessary so that the gathered information will provide a sound basis for making decisions.

Standard II. Results of Identification Activities are Integrated Into the Preservation Planning Process

Results of identification activities are reviewed for their effects on previous planning data. Archival research or field survey may refine the understanding of one or more historic contexts and may alter the need for additional survey or study of particular property types. Incorporation of the results of these activities into the planning process is necessary to ensure that the planning process is always based on the best available information.

Standard III. Identification Activities Include Explicit Procedures for Record-Keeping and Information Distribution

Information gathered in identification activities is useful in other preservation planning activities only when it is systematically gathered and recorded, and made available to those responsible for preservation planning. The results of identification activities should be reported in a format that summarizes the design and methods of the survey, provides a basis for others to review the results, and states where information on identified properties is maintained. However, sensitive information, like the location of fragile resources, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Identification

Introduction

These Guidelines link the Standards for Identification with more specific guidance and technical information. The Guidelines outline one approach to meet the Standards for Identification. Agencies, organizations and individuals proposing to approach identification differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Role of Identification in the Planning Process
Performing Identification
Integrating Identification Results
Reporting Identification Results
Recommended Sources of Technical Information

Role of Identification in the Planning Process

Identification is undertaken for the purpose of locating historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interviews, field survey and analysis. Combinations of these activities may be selected and appropriate levels of effort assigned to produce a flexible series of options. Generally identification activities will have multiple objectives, reflecting complex management needs. Within a comprehensive planning process, identification is normally undertaken to acquire property-specific information needed to refine a particular historic context or to develop any new historic contexts. (See the Guidelines for Preservation Planning for discussion of information gathering to establish plans and to develop historic contexts.) The results of identification activities are then integrated into the planning process so that subsequent activities are based on the most up-to-date information. Identification activities are also undertaken in the absence of a comprehensive planning process, most frequently as part of a specific land-use or development project. Even lacking a formally developed preservation planning process, the benefits of efficent, goal-directed research may be obtained by the development of localized historic contexts, suitable in scale for the project area, as part of the background research which customarily occurs before field survey efforts.

Performing Identification

Research Design

Identification activities are essentially research activities for which a statement of objectives or research design should be prepared before work is performed. Within the framework of a comprehensive planning process, the research design provides a vehicle for integrating the various activities performed during the identification process and for linking those activities directly to the goals and the historic context(s) for which those goals were defined. The research design stipulates the logical integration of historic context(s) and field and laboratory methodology. Although these tasks may be performed individually, they will not contribute to the greatest extent possible in increasing information on the historic context unless they relate to the defined goals and to each other. Additionally, the research design provides a focus for the integration of interdisciplinary information. It ensures that the linkages between specialized activities are real, logical and address the defined research questions. Identification activities should be guided by the research design and the results discussed in those terms. (See Reporting Identification Results)

The research design should include the following:

1. *Objectives* of the identification activities. For example: to characterize the range of historic properties in a region; to identify the number of properties associated with a context; to gather information to determine which properties in an area are significant.

The statement of objectives should refer to current knowledge about the historic contexts or property types, based on background research or assessments of previous research. It should clearly define the physical extent of the area to be investigated and the amount and kinds of information to be gathered about properties in the area.

2. *Methods* to be used to obtain the information. For example: archival research or field survey. Research methods should be clearly and specifically related to research problems.

Archival research or survey methods should be carefully explained so that others using the gathered information can understand how the information was obtained and what its possible limitations or biases are.

The methods should be compatible with the past and present environmental character of the geographical area under study and the kinds of properties most likely to be present in the area.

3. *The expected results* and the reasons for those expections.

Expectations about the kind, number, location, character and condition of historic properties are generally based on a combination of background research, proposed hypotheses, and analogy to the kinds of properties known to exist in areas of similar environment or history.

Archival Research

Archival or background research is generally undertaken prior to any field survey. Where identification is undertaken as part of a comprehensive planning process, background research may have taken place as part of the development of the historic contexts (see the Guidelines for Preservation Planning). In the absence of previously developed historic contexts, archival research should address specific issues and topics. It should not duplicate previous work. Sources should include, but not be limited to, historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories and other studies, as well as standard historical reference works, as appropriate for the research problem. (See the Guidelines for Historical Documentation for additional discussion.)

Field Survey

The variety of field survey techniques available, in combination with the varying levels of effort that may be assigned, give great flexibility to implementing field surveys. It is important that the selection of field survey techniques and level of effort be responsive to the management needs and preservation goals that direct the survey effort.

Survey techniques may be loosely grouped into two categories, according to their results. First are the techniques that result in the characterization of a region's historic properties. Such techniques might include "windshield" or walk-over surveys, with perhaps a limited use of sub-surface survey. For purposes of these Guidelines, this kind of survey is termed a "reconnaissance." The second category of survey techniques is those that permit the identification and description of specific historic properties in an area; this kind of survey effort is termed "intensive." the terms "reconnaissance" and "intensive" are sometimes defined to mean particular survey techniques, generally with regard to prehistoric sites. The use of the terms here is general and is not intended to redefine the terms as they are used elsewhere.

Reconnaissance survey might be most profitably employed when gathering data to refine a developed historic context—such as checking on the presence or absence of expected property types, to define specific property types or to estimate the distribution of historic properties in an area. The results of regional characterization activities provide a general understanding of the historic properties in a particular area and permit management decisions that consider the sensitivity of the area in terms of historic preservation concerns and the resulting implications for future land use planning. The data should allow the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved. In most cases, areas surveyed in this way will require resurvey if more complete information is needed about specific properties.

A reconnaissance survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including the extent of survey coverage;
4. The kinds of historic properties present in the surveyed area;
5. Specific properties that were identified, and the categories of information collected; and
6. Places examined that did not contain historic properties.

Intensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties. Intensive survey describes the distribution of properties in an area; determines the number, location, and condition of properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of specific properties.

An intensive survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including an estimate of the extent of survey coverage;
4. A record of the precise location of all properties identified; and
5. Information on the appearance, significance, integrity and boundaries of each property sufficient to permit an evaluation of its significance.

Sampling

Reconnaissance or intensive survey methods may be employed according to a sampling procedure to examine less-than-the-total project or planning area.

Sampling can be effective when several locations are being considered for an undertaking or when it is desirable to estimate the cultural resources of an area. In many cases, especially where large land areas are involved, sampling can be done in stages. In this approach, the results of the initial large area survey are used to structure successively smaller, more detailed surveys. This "nesting" approach is an efficient technique since it enables characterization of both large and small areas with reduced effort. As with all investigative techniques, such procedures should be designed to permit an independent assessment of results.

Various types of sample surveys can be conducted, including, but not limited to: random, stratified and systematic. Selection of sample type should be guided by the problem the survey is expected to solve, the nature of the expected properties and the nature of the area to be surveyed.

Sample surveys may provide data to estimate frequencies of properties and types of properties within a specified area at various confidence levels. Selection of confidence levels should be based upon the nature of the problem the sample survey is designed to address.

Predictive modeling is an application of basic sampling techniques that projects or extrapolates the number, classes and frequencies of properties in unsurveyed areas based on those found in surveyed areas. Predictive modeling can be an effective tool during the early stages of planning an undertaking, for targeting field survey and for other management purposes. However, the accuracy of the model must be verified; predictions should be confirmed through field testing and the model redesigned and retested if necessary.

Special survey techniques

Special survey techniques may be needed in certain situations.

Remote sensing techniques may be the most effective way to gather background environmental data, plan more detailed field investigations, discover certain classes of properties, map sites, locate and confirm the presence of predicted sites, and define features within properties. Remote sensing techniques include aerial, subsurface and underwater techniques. Ordinarily the results of remote sensing should be verified through independent field inspection before making any evaluation or statement regarding frequencies or types of properties.

Integrating Identification Results

The results of identification efforts must be integrated into the planning process so that planning decisions are based on the best available information. The new information is first assessed against the objectives of the identification effort to determine whether the gathered information meets

the defined identification goals for the historic context(s); then the goals are adjusted accordingly. In addition, the historic context narrative, the definition of property types and the planning goals for evaluation and treatment are all adjusted as necessary to accommodate the new data.

Reporting Identification Results

Reporting of the results of identification activities should begin with the statement of objectives prepared before undertaking the survey. The report should respond to each of the major points documenting:

1. Objectives;
2. Area researched or surveyed;
3. Research design or statement of objectives;
4. Methods used, including the intensity of coverage. If the methods differ from those outlined in the statement of objectives, the reasons should be explained.
5. Results: how the results met the objectives; result analysis, implications and recommedations; where the compiled information is located.

A summary of the survey results should be available for examination and distribution. Identified properties should then be evaluated for possible inclusion in appropriate inventories.

Protection of information about archeological sites or other properties that may be threatened by dissemination of that information is necessary. These may include fragile archeological properties or properties such as religious sites, structures, or objects, whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

The Archeological Survey: Methods and Uses. Thomas F. King. Interagency Archeological Services, U.S. Department of the Interior, 1978. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock number 024-016-00091. Written primarily for the non-archeologist, this publication presents methods and objectives for archeological surveys.

Cultural Resources Evaluation of the Northern Gulf of Mexico Continental Shelf. National Park Service, U.S. Department of the Interior, 1977.

Guidelines for Local Surveys: A Basis for Preservation Planning. Anne Derry, H. Ward Jandl, Carol Shull and Jan Thorman. National Register Division, U.S. Department of the Interior, 1978. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock number 024-016-0089-7. General guidance about designing and carrying out community surveys.

The Process of Field Research: Final Report on the Blue Ridge Parkway Folklife Project. American Folklife Center, 1981.

Regional Sampling in Archeology. David Hurst Thomas. University of California, Archeological Survey Annual Report, 1968-9, 11:87-100.

Remote Sensing: A Handbook for Archeologists and Cultural Resource Managers. Thomas R. Lyons and Thomas Eugene Avery. Cultural Resource Management Division, National Park Service, U.S. Department of the Interior, 1977.

Remote Sensing and Non-Destructive Archeology. Thomas R. Lyons and James L. Ebert, editors. Remote Sensing Division, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior and University of New Mexico, 1978.

Remote Sensing Experiments in Cultural Resource Studies: Non-Destructive Methods of Archeological Exploration, Survey and Analysis. Thomas R. Lyons, assembler. reports of the Chaco Center, Number One. National Park Service, U.S. Department of the Interior and University of New Mexico, 1978.

Sampling in Archeology. James W. Mueller, editor. University of Arizona Press, 1975. Tucson, Arizona.

Scholars as Contractors. William J. Mayer-Oakes and Alice W. Portnoy, editors. Cultural Resource Management Studies. U.S. Department of the Interior, 1979.

Sedimentary Studies of Prehistoric Archeological Sites. Sherwood Gagliano, Charles Pearson, Richard Weinstein, Diana Wiseman, and Christopher McClendon. Division of State Plans and Grants, National Park Service, U.S. Department of the Interior, 1982. Washington, D.C. Available from Coastal Environments Inc., 1260 Main Street, Baton Rouge, Louisiana 70802. Establishes and evaluates a method for employing sedimentological analysis in distinguishing site areas from non-site areas when identifying submerged archeological sites on the continental shelf.

State Survey Forms. Available from Interagency Resource Management Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Characterizes cultural resource survey documentation methods in State Historic Preservation Offices.

Truss Bridge Types: A Guide to Dating and Identifying. Donald C. Jackson and T. Allan Comp. American Association for State and Local History, 1977. Nashville, Tennessee. Technical leaflet #95. Available from AASLH, 708 Berry Road, Nashville, Tennessee 37204. Information about performing surveys of historic bridges and identifying the types of properties encountered.

Secretary of the Interior's Standards for Evaluation

Evaluation is the process of determining whether identified properties meet defined criteria of significance and therefore should be included in an inventory of historic properties determined to meet the criteria. The criteria employed vary depending on the inventory's use in resource management.

Standard I. Evaluation of the Significance of Historic Properties Uses Established Criteria

The evaluation of historic properties employs criteria to determine which properties are significant. Criteria should therefore focus on historical, architectural, archeological, engineering and cultural values, rather than on treatments. A statement of the minimum information necessary to evaluate properties against the criteria should be provided to direct information gathering activities.

Because the National Register of Historic Places is a major focus of preservation activities on the Federal, State and local levels, the National Register criteria have been widely adopted not only as required for Federal purposes, but for State and local inventories as well. The National Historic Landmark criteria and other criteria used for inclusion of properties in State historic site files are other examples of criteria with different management purposes.

Standard II. Evaluation of Significance Applies the Criteria Within Historic Contexts

Properties are evaluated using a historic context that identifies the significant patterns that properties represent and defines expected property types against which individual properties may be compared. Within this comparative framework, the criteria for evaluation take on particular meaning with regard to individual properties.

Standard III. Evaluation Results in A List or Inventory of Significant Properties That Is Consulted In Assigning Registration and Treatment Priorities

The evaluation process and the subsequent development of an inventory of significant properties is an on-going activity. Evaluation of the significance of a property should be completed before registration is considered and before preservation treatments are selected. The inventory entries should contain sufficient information for subsequent activities such as registration or treatment of properties, including an evaluation statement that makes clear the significance of the property within one or more historic contexts.

Standard IV. Evaluation Results Are Made Available to the Public

Evaluation is the basis of registration and treatment decisions. Information about evaluation decisions should be organized and available for use by the general public and by those who take part in decisions about registration and treatment. Use of appropriate computer-assisted data bases should be a part of the information dissemination effort. Sensitive information, however, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Evaluation

Introduction

These Guidelines link the Standards for Evaluation with more specific guidance and technical information. These Guidelines describe one approach to meeting the Standards for Evaluation. Agencies, organizations, or individuals proposing to approach evaluation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

The Evalauation Process
Criteria
Application of Criteria within a Historic Context
Inventory
Recommended Sources of Technical Information

The Evaluation Process

These Guidelines describe principles for evaluating the significance of one or more historic properties with regard to a given set of criteria.

Groups of related properties should be evaluated at the same time whenever possible; for example, following completion of a theme study or community survey.

Evaluation should not be undertaken using documentation that may be out of date. Prior to proceeding with evaluation the current condition of the property should be determined and previous analyses evaluated in light of any new information.

Evaluation must be performed by persons qualified by education, training and experience in the application of the criteria. Where feasible, evaluation should be performed in consultation with other individuals experienced in applying the relevant criteria in the geographical area under consideration; for example, the State Historic Preservation Officer or local landmarks commission.

Evaluation is completed with a written determination that a property is or is not significant based on provided information. This statement should be part of the record.

Criteria: The purposes of evaluation criteria should be made clear. For example, the criteria may be used "to evaluate properties for inclusion in the county landmarks list," or "to implement the National Register of Historic Places program."

For Federal cultural resource management purposes, criteria used to develop an inventory should be coordinated with the National Register criteria for evaluation as implemented in the approved State comprehensive historic preservation plan.

Content of Criteria: Criteria should be appropriate in scale to the purpose of the evaluation. For example, criteria designed to describe national significance should not be used as the basis for creating a county or State inventory. Criteria should be categorical and not attempt to describe in detail every property likely to qualify. Criteria should outline the disciplines or broad areas of concern (history, archeology, architectural history, engineering and culture, for example) included within the scope of the inventory; explain what kinds of properties, if any, are excluded and the reasons for exclusion; and define how levels of significance are measured, if such levels are incorporated into the criteria. If the criteria are to be used in situations where the National Register criteria are also widely used, it is valuable to include a statement explaining the relationship of the criteria used to the National Register criteria, including how the scope of the inventory differs from that defined by the National Register criteria and how the inventory could be use to identify properties that meet the National Register criteria.

Information Needed to Evaluate Properties: The criteria should be accompanied by a statement defining the minimum information necessary to evaluate properties to insure that this information is collected during identification activities intended to locate specific historic properties. Generally, at least the following will be needed:

1. Adequately developed historic contexts, including identified property types. (See the Guidelines for Preservation Planning for discussion of development of historic contexts.)

2. Sufficient information about the appearance, condition and associative values of the property to be evaluated to:

a. Classify it as to property type;

b. Compare its features or characteristics with those expected for its property type; and

c. Define the physical extent of the property and accurately locate the property.

To facilitate distinguishing between facts and analysis, the information should be divided into categories, including identification and description of pertinent historical contexts; description of the property and its significance in the historical context; and analysis of the integrity of the property relative to that needed to represent the context.

Usually documentation need not include such items as a complete title history or biography of every owner of a property, except where that information is important in evaluating its significance. Information on proposed or potential treatments or threats, such as destruction of a property through uncontrollable natural processes, is also not needed for evaluation, unless those effects are likely to occur prior to or during the evaluation, thereby altering the significant characteristic of the property. If archeological testing or structural analysis is needed for evaluation, it should not proceeded beyond the point of providing the information necessary for evaluation and should not unnecessarily affect significant features or values of the property.

When more information is needed: Evaluation cannot be conducted unless all necessary information is available. (See Information Needed to Evaluate Properties.) Any missing information or analysis should be identified (e.g. development of context or information on the property) as well as the specific activities required to obtain the information (archival research, field survey and testing, or laboratory testing). When adequate information is not available, it is important to record that fact so that evaluation will not be undertaken until the information can be obtained. In some cases needed information is not obtainable, for example, where historical records have been destroyed or analytical techniques have not been developed to date materials in archeological sites. If an evaluation must be completed in these cases, it is important to acknowledge what information was not obtainable and how that missing information may affect the reliability of the evaluation.

Application of the Criteria within a Historic Context

The first step in evaluation is considering how the criteria apply to the

particular historic context. This is done by reviewing the previously developed narrative for the historic context and determining how the criteria would apply to properties in that context, based on the important patterns, events, persons and cultural values identified. (See the discussion of the historic context narrative in the Guidelines for Preservation Planning.) This step includes identification of which criteria each property type might meet and how integrity is to be evaluated for each property type under each criterion. Specific guidelines for evaluating the eligibility of individual properties should be established. These guidelines should outline and justify the specific physical characteristics or data requirements that an individual property must possess to retain integrity for the particular property type; and define the process by which revisions or additions can be made to the evaluation framework.

Consideration of property type and intergrity: After considering how the criteria apply to the particular historic context, the evaluation process for a property generally includes the following steps:

1. A property is classified as to the appropriate historic context(s) and property type(s). If no existing property type is appropriate, a new property type is defined, its values identified, and the specific characteristics or data requirements are outlined and justified as an addition to the historic context. If necessary, a new historic context is defined for which values and property types and their integrity requirements are identified and justified.

2. A comparison is made between the existing information about the property and the integrity characteristics or data required for the property type.

a. If the comparison shows that the property possesses these characteristics, then it is evaluated as significant for that historic context. The evaluation includes a determination that the property retains integrity for its type.

b. If the comparison shows that the property does not meet the minimum requirements, one of several conclusions is reached:

(1) The property is determined not significant because it does not retain the integrity defined for the property type.

(2) The property has characteristics that may make it significant but these differ from those expected for that property type in that context. In this case, the historic context or property types should be reexamined and revised if necessary, based on subsequent research and survey.

The evaluation should state how the particular property meets the integrity requirements for its type. When a property is disqualified for loss of integrity, the evaluation statement should focus on the kinds of integrity expected for the property type, those that are absent for the disqualified property, and the impact of that absence on the property's ability to exemplify architectural, historical or research values within a particular historic context.

The integrity of the property in its current condition, rather than its likely condition after a proposed treatment, should be evaluated. Factors such as structural problems, deterioration, or abandonment should be considered in the evaluation only if they have affected the integrity of the significant features or characteristics of the property.

Inventory

An inventory is a repository of information on specific properties evaluated as significant.

Content: The inventory should include:

1. Summaries of the important historic contexts. These may be in the form of an approved plan or analyses of historic contexts important in the history of the geographical area covered by the inventory.

2. Descriptions of significant property types of these contexts, whether or not any specific properties have been identified.

3. Results of reconnaissance surveys or other identification activities, even if the level of information on specific properties identified as part of those activities is not sufficient to evaluate individual properties.

4. Information on individual properties that was used in evaluation.

Historic contexts are identified by name, with reference to documents describing those contexts, or with a narrative statement about the context(s) where such documents do not exist.

A description of the property. Part of this description may be a photographic record.

A statement that justifies the significance of the property in relation to its context(s). This statement should include an analysis of the integrity of the property.

Boundaries of the property.

A record of when a property was evaluated and included in the inventory, and by whom.

Records on demolished or altered properties and properties evaluated as not significant should be retained, along with full description of areas surveyed, for the planning information these records provide about impacts to properties and about the location and character of non-significant properties to prevent redundant identification work at a later time.

Maintenance: Inventory entries should be maintained so that they accurately represent what is known about historic properties in the area covered by the inventory. This will include new information gained from research and survey about the historic contexts, property types, and previously evaluated properties, as well as information about newly evaluated properties. For individual properties, addition of kinds of significance, change in the boundaries, or loss of significance through demolition or alteration should be recorded.

Uses and Availability: An inventory should be managed so that the information is accessible. Its usefulness depends on the organization of information and on its abilty to incorporate new information. An inventory should be structured so that entries can be retrieved by locality or by historic context.

The availability of the inventory information should be announced or a summary should be distributed. This may be in the form of a list of properties evaluated as significant or a summary of the historic contexts and the kinds of properties in the inventory. Inventories should be avilable to managers, planners, and the general public at local, State, regional, and Federal agency levels.

It is necessary to protect information about archeological sites or other properties whose integrity may be damaged by widespread knowledge of their location. It may also be necessary to protect information on the location of properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

How to Apply the National Register Criteria. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Provides detailed technical information about interpretation of the significance and integrity criteria used by the National Register of Historic Places program.

How To Series. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Discusses application of the National Register criteria for evaluation. Titles include:

How To Establish Boundaries for National Register Properties.
How To Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years.
How To Improve Quality of Photos for National Register Nominations.
How To Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976.
How To Apply for Certification of State and Local Statutes and Historic Districts.
How To Quality Historic Properties Under the New Federal Law Affective Easements.

Importance of Small, Surface, and Disturged Sites as Sources of Significant Archeological Data. Valerie Talmage and Olga Chesler. Interagency Archeological Service 1977. Washington, D.C. Available from the National Technical Information Service. NTIS Publication Number PB 270939/AS. Discusses the role of small, surface, and disturbed sites as sources of significant information about a variety of prehistoric activities. These types of sites are frequently ignored in the development of regional archeological research designs.

Secretary of the Interior's Standards For Registration

Registration is the formal recognition of properties evaluated as significant. Preservation benefits provided by various registration programs range from honorific recognition to prohibition of demolition or alteration of included properties. Some registration programs provide recognition and other broad benefits while other programs authorize more specific forms of protection.

Standard I. Registration Is Conducted According To Stated Procedures

Registration of historic properties in the National Register of Historic Places must be done in accordance with the National Register regulations published in the Code of Federal Regulations, 36 CFR 60. Registration for other lists or purposes follow an established process that is understood by the public, particularly by those interests that may be affected by registration.

Standard II. Registration Information Locates, Describes and Justifies the Significance and Physical Integrity of a Historic Property

Registers are used for planning, research and treatment. They must contain adequate information for users to locate a property and understand its significance. Additional information may be appropriate depending on the intended use of the register.

Standard III. Registration Information is Accessible to the Public

Information should be readily available to the public and to government agencies responsible for the preservation of historic properties and for other planning needs.

Secretary of the Interior's Guidelines for Registration

Introduction

These Guidelines link the Standards for Registration with more specific guidance and technical information. They describe one approach to meeting the Standards for Registration. Agencies, organizations, or individuals proposing to approach registration differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

Purpose of Registration Programs
Registration Procedures
Documentation on Registered Properties
Public Availability
Recommended Sources of Technical Information

Purpose of Registration Programs

Registration of historic properties is the formal recognition of properties that have been evaluated as significant according to written criteria. Registration results in an official inventory or list that serves an administrative function. A variety of benefits or forms of protection accure to a registered property, ranging from honorific recognition to prohibition of demolition or alteration.

Some registration programs provide recognition and other broad benefits or entitlements, while other registrations of properties may, in addition, authorize more specific forms of protection. The application of the registration process should be a logical outgrowth of the same planning goals and priorities that guided the identification and evaluation activities. All registration programs should establish priorities for recognition of their authorized range of properties; provide for confidentiality of sensitive information; and establish a means of appealing the registration or non-registration of a property.

Registration Procedures

Explicit procedures are essential because they are the means by which the public can understand and participate in the registration process. Procedures for registration programs should be developed by professionals in the field of historic preservation, in consultation with those who will use or be affected by the program. Prior to taking effect, procedures should be published or circulated for comment at the governmental level at which they will be used. (Procedures for registration of properties in the National Register of Historic Places and the National Historic Landmarks list, for example, are published in the Federal Register.)

Any registration program should include:

1. A professional staff to prepare or assess the documentation;
2. A professional review, independent of the nominating source, to provide an impartial evaluation of the documented significance;
3. Adequate notice to property owners, elected officials and the public about proposed registrations and the effects of listing, if any; and
4. A means of public participation.

Professional Review: The registration process should include an independent evaluation of the significance of the property and of the quality and thoroughness of the documentation supporting that significance. Such evaluation ensures that significance is adequately justified and that registration documentation meets the technical requirements of the registration process.

State and local preservation programs, concerned with both public and private properties, generally use a review board, panel or commission. This level of professional review has proven to be effective in assessing the significance of properties considered for registration.

Review boards and other forms of independent review should include professionals in the fields or diciplines included in the criteria; representatives of other fields or disciplines may be desirable to reflect other values or aspects of the register. Key personnel must be qualified by education, training or experience to accomplish their designated duties. (See the Professional Qualifications Standards.)

The scope of the independent review should be clearly stated in the registration procedures and should not include issues outside the scope of the applicable criteria for evaluation and other areas specified in the procedures. Generally, independent reviewers should not be involved in any primary research or analysis related to properties under consideration; this information should be gathered and organized prior to review meetings. Documentation presented to the reviewers should be made available to

the public prior to review meetings or public hearings. Registration of properties should not take place until review of documentation has been completed.

Public Notice: Adequate notice allows property owners, officials and other interested parties to comment on proposed registrations prior to action by the independent reviewers. The degree of protection and control provided by a registration program may be a factor in determining what constitutes adequate notice. For example, adequate notice of proposed inclusion in honorific registers may be less complex than that for registration that results in local controls on alteration or demolition of registered properties.

Notice to elected officials and the public is necessary to distribute information about potential registrations of concern to planning and development interests.

Adequate notice to property owners may be accomplished through means ranging from individual notification by mail to publication of a public notice, depending on the nature of the registration program and the number and character of the properties involved.

Public notices and owner notification about proposed registrations should include the dates and times of public meetings and review meetings, the kinds of comments that are appropriate, and how comments will be considered in the evaluation process. The notice should also state where information can be obtained about the registration program, the criteria used to evaluate properties for inclusion, and the significance of specific properties under consideration.

The procedures should include a means of public participation in the form of submission of written comments or a review meeting open to the public or a public hearing.

The procedures should state time periods within which reviews, notices, comments, public hearings, review meetings and appeals will occur. The time periods should be short enough to allow for efficient recognition of historic properties but also allow adequate time for public comment and participation by those affected. Time periods may vary depending on whether activities are carried out at the local, State, or national level. These time schedules should be widely circulated so that the process is widely understood.

Appeal Process: A means of appeal should be included in the registration process to allow for reconsideration of a property's inclusion. Reasons for appeal may range from existence of additional information about the property supporting or refuting its significance to administrative or procedural error. An appeal process should specify to whom an appeal may be made and how the information that is provided will be evaluated. The appeal procedures should also state the time limit, if any, on appealing a decision and on consideration of information and issuance of a decision by the appeal authority.

Documentation on Registered Properties

Documentation requirements should be carefully weighed to provide the information *actually* needed to reach a registration decision and should be made public. It should be made certain that identification and evaluation activities obtain and record the information necessary for registration. Documentation should be prepared in a standardized format and on materials that are archivally stable and easy to store and retrieve.

Location: The precise location of a historic property must be clearly identified.

Street address, town or vicinity, and county should be provided. Properties should also be located on maps; these may be USGS maps, county planning maps, or city base maps or real estate maps. A uniform system of noting location, such as UTM grid points or longitude and latitude, should supplement mapping. It is recommended that each registration process standardize the preferred choice of maps appropriate to the scope of the process.

Description: An accurate description of a property includes a description of both the current and historical physical appearance and condition of the property and notes the relevant property type(s) for the applicable historic context(s). Discussion should include alterations, deterioration, relocation and other changes to the property since its period of significance.

Significance: A statement of significance should explain why a property meets the criteria for inclusion in the register to which it has been nominated.

This statement should contain at least 3 elements:

1. Reference to the relevant historic context(s);
2. Identification of relevant property types within the context and their characteristics; and
3. Justification that the property under consideration has the characteristics required to qualify it.

Relevant historic contexts can be identified through reference to the preservation plan or other documents where the contexts have been previously described or can be provided by a narrative discussion of the context. (The development of contexts and their use in evaluating properties are discussed in the Guidelines for Preservation Planning and the Guidelines for Evaluation.) A significant property type and its characteristics are identified either through reference to the historic context(s) or by a narrative in the documentation that describes historic contexts. Justification of a specific property is made by systematic comparison of its characteristics to those required for the property type.

Boundaries: The delineation and justification of boundaries for a registered property are important for future treatment activities. It is especially critical when legal restraints or restrictions may result from the registration of properties. Thus, boundaries should correspond as closely as possible to the actual extent and configuration of the property and should be carefully selected to encompass, but not exceed, the extent of the significant resource(s). The selection of boundaries should reflect the significant aspects of the property.

Arbitrary boundaries should not be chosen for ease of description since this can result in the inclusion of unrelated land or in exclusion of a portion of the historic property. Present property lines should not be chosen as property boundaries without careful analysis of whether they are appropriate to the historic property. A single uniform boundary description and acreage should not be applied to a group or class of properties (antebellum plantations, for example) without examination of the actual extent of each property. The selected boundaries should be justified as appropriate to the historic property.

Boundaries should be clearly and precisely described, using a verbal boundary description, legal description, accurate sketch map, or lines drawn on base maps, or a combination of these where needed to specify the limits of the property being registered. When used, maps should show the location of buildings, structures, sites or objects within the boundary.

Updating Information on Registered Properties: A change in the condition of the significant features of a property may require a change in the official registration record. Alteration of a significant architectural feature, for example, could mean that a property is no longer significant for its architectural design.

Additional significance of registered properties may be identified through development of new historic contexts.

Research may reveal that a property is significant in other historic contexts or is significant at a higher level. For example, a property previously recognized as of local significance could be found to be of national significance.

A change in location or condition of a registered property may mean that the property is no longer significant for the reasons for which it was registered and the property should be deleted from the registered list.

Public Availability

Lists of registered properties should be readily available for public use, and information on registered properties should be distributed on a regular basis. Lists of properties registered nationally are distributed through publication in the Federal Register and to Congressional Offices and State Historic Preservation Offices. Comprehensive information should be stored and maintained for public use at designated national, State and local authorities open to the public on a regular basis.

Information should be retrievable by the property name, and location, historic context or property type. The specific location of properties that may be threatened by dissemination of that information must be withheld. These may include fragile archeological properties or properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property location.

Recommended Sources of Technical Information

How to Complete National Register Forms. National Register Division, National Park Service, U.S. Deparment of the Interior, 1977. Washington, D.C. Available through the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402. GPO Stock Number 024-005-00868-4. This publication is the standard reference on the documentation requirements of the National Register of Historic Places program.

How To Series. Available through the National Register Branch, Interagency Resources Division, National Park Service, Department of the Interior 20240. These information sheets contain supplementary information about interpreting the National Register criteria for evaluation and documentation requirements of the National Register registration program. Title include:

How To Establish Boundaries for National Register Properties.

How To Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years.

How To Improve the Quality of Photographs for National Register Nominations.

How To Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976.

How To Apply for Certification of State and Local Statutes and Historic Districts.

How To Qualify Historic Properties Under the New Federal Law Affecting Easements.

Note on Documentation and Treatment of Historic Properties

Documentation and treatment of historic properties includes a variety of techniques to preserve or protect properties, or to document their historic values and information. While documentation activities may be applied to any potentially historic property, generally only those properties that first have been evaluated as significant against specified criteria (such as those of the National Register) are treated. Some commonly applied treatments are preservation in place, rehabilitation, restoration and stabilization; there are other types of treatments also. Documentation and treatment may be applied to the same property; for example, archeological, historical, and architectural documentation may be prepared before a structure is stabilized or before foundations or chimneys or other lost features are reconstructed.

Alternatives for treatment will usually be available, and care should be applied in choosing among them. Preservation in place is generally preferable to moving a property. Over time, the preferred treatment for a property may change; for example, an archeological site intended for preservation in place may begin to erode so that a combination of archeological documentation and stabilization may be required. If a decision is made that a particular property will not be preserved in place, the need for documentation must then be considered.

The three sets of documentation standards (i.e., the Standards for Historical Documentation, Standards for Architectural and Engineering Documentation, and Standards for Archeological Documentation) as well as the Standards for Historic Preservation Projects (Acquisition, Preservation, Stabilization, Protection, Rehabilitation, Restoration, and Reconstruction) describe the techniques of several disciplines to treat historic properties, and to document or preserve information about their historical values. The integration of planning for documentation and treatment with their execution is accomplished in a statement of objectives, or research design. Because both the goals and appropriate methodologies are likely to be interdisciplinary in nature, the relationship among these various activities should be specified in the research design to ensure that the resulting documentation produces a comprehensive record of historic properties in an efficient manner.

Secretary of the Interior's Standards for Historical Documentation

Historical documentation provides important information related to the significance of a property for use by historians, researchers, preservationists, architects, and historical archeologists. Research is used early in planning to gather information needed to identify and evaluate properties. (These activities are discussed in the Standards and Guidelines for Preservation Planning and the Standards and Guidelines for Identification.) Historical documentation is also a treatment that can be applied in several ways to properties previously evaluated as significant; it may be used in conjunction with other treatment activities (as the basis for rehabilitation plans or interpretive programs, for example) or as a final treatment to preserve information in cases of threatened property destruction. These Standards concern the use of research and documentation as a treatment.

Standard I. Historical Documentation Follows a Research Design That Responds to Needs Identified in the Planning Process

Historical documentation is undertaken to make a detailed record of the significance of a property for research and interpretive purposes and for conservation of information in cases of threatened property destruction. Documentation must have defined objectives so that proposed work may be assessed to determine whether the resulting documentation will meet needs identified in the planning process. The research design or statement of objectives is a formal statement of how the needs identified in the plan are to be addressed in a specific documentation project. This is the framework that guides the selection of methods and evaluation of results, and specifies the relationship of the historical documentation efforts to other proposed treatment activities.

Standards II. Historical Documentation Employs an Appropriate Methodology to Obtain the Information Required by The Research Design

Methods and techniques of historical research should be chosen to obtain needed information in the most efficient way. Techniques should be carefully selected and the sources should be

recorded so that other researchers can verify or locate information discovered during the research.

Standard III. The Results of Historical Documentation Are Assessed Against the Research Design and Integrated Into the Planning Process

Documentation is one product of research; information gatherd about the usefulness of the research design itself is another. The research results are assessed against the research design to determine how well they meet the objectives of the research. The results are integrated into the body of current knowledge and reviewed for their implications for the planning process. The research design is reviewed to determine how future research designs might be modified based on the activity conducted.

Standard IV. The Results of Historical Documentation Are Reported and Made Available to the Public

Research results must be accessible to prospective users. Results should be communicated to the professional community and the public in reports summarizing the documentation activity and identifying the repository of additional detailed information. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties.

Secretary of the Interior's Guidelines for Historical Documentation

Introduction

These Guidelines link the Standards for Historical Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Historical Documentation. Agencies, organizations or individuals proposing to approach historical documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Historical Documentation Objectives
Research Design
Methods
Integrating Results
Reporting Results
Recommended Sources of Technical Information

Documentation Objectives

Documentation is a detailed record, in the form of a report or other written document, of the historical context(s) and significance of a property. Historical research to create documentation uses archival materials, oral history techniques, ethnohistories, prior research contained in secondary sources and other sources to make a detailed record of previously identified values or to investigate particular questions about the established significance of a property or properties. It is an investigative technique that may be employed to document associative, architectural, cultural or informational values of properties. It may be used as a component of structural recording or archeological investigation, to enable interpretation or to mitigate the anticipated loss of a property through conservation of information about its historical, architectural or archeological significance. Documentation generally results in both greater factual knowledge about the specific property and its values, and in better understanding of the property in its historical context. In addition to increasing factual knowledge about a property and its significance in one historical context, documentation may also serve to link the property to or define its importance in other known or yet-to-be defined historic contexts.

Documentation should incorporate, rather than duplicate, the findings of previous research. Research may be undertaken to identify how a particular property fits into the work of an architect or builder; to analyze the historical relationship among several properties; or to document in greater detail the historical contexts of properties. The kinds of questions investigated will generally depend on what is already known or understood and what information is needed. For example, documentation of a bridge whose technological significance is well understood, but whose role in local transportation history is not, would summarize the information on the former topic and focus research on the associative values of the property. The questions that research seeks to answer through deed, map or archival search, oral history and other techniques may also relate to issues addressed in structural documentation or archeological investigation; for example, the reasons for and history of modification of a building to be the subject of architectural or engineering documentation.

Research Design

Historical documentation is guided by a statement of objectives, research design or task directive prepared before research is performed. The research design is a useful statement of how proposed work will enhance existing archival data and permits comparison of the proposed work with the results. The purpose of the research design is to define the proposed scope of the documentation work and to define a set of expectations based on the information available prior to the research. Generally, the research design also ensures that research methods are commensurate with the type, quality and source of expected information.

The research design for a property should identify:

1. Evaluated significance of the property(ies) to be investigated;
2. Historical, architectural, archeological or cultural issues relevant to the evaluated significance of the property;
3. Previous research on those issues and how the proposed work is related to existing knowledge;
4. The amount and kinds of information required to produce reliable historical analyses;
5. Methods to be used to obtain the information;
6. Types of sources to be investigated; types of personnel required;
7. Expected results or findings based on available knowledge about the property and its context; and
8. Relationship of the proposed historical documentation to other proposed treatment activities; for example, recommendations on the use of documentation in interpretive programs or other aspects of treatment such as anticipated architectural, engineering or archeological documentation).

Research Methods

Research methods should be chosen based on the information needs, be capable of replication and be recorded so that another researcher could follow the same research procedure. Sources should be recorded so that other researchers can locate or verify the information discovered during the search.

Use of Sources: The variety of available written and graphic materials and the number of individuals that can serve as sources, including but not limited to personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, interviews of individuals and secondary source materials, should be considered in developing the research design. Part of the development of the research design is deciding what kinds of source materials are most likely to contain needed information and at what point in the research process that information will be most valuable. For example,

often secondary sources are most valuable for gathering background information, while primary sources are more useful to gather or confirm specific facts. The documentation goals may not *require* exhaustive investigation of sources, such as deed records or building permits. Research may be kept cost-effective by making careful decisions about when to use particular sources, thereby limiting the use of time-consuming techniques to when absolutely necessary. Decisions about when to gather information may also affect the quality of information that can be gathered. When dealing with large project areas where loss of many properties is anticipated, it is important to gather information from local archival sources and oral histories before project activities destroy or disperse family or community records and residents.

Analysis of the accuracy and biases of source materials is critical in analyzing the information gathered from these sources. Maps, historical atlases and insurance maps should be assessed like written records for errors, biases and omissions; for example, some map sources may omit structures of a temporary nature or may not fully depict ethnic or minority areas. Likewise, building plans and architectural renderings may not reflect a structure as it was actually built.

Analysis: Analysis should not only focus on the issues defined in the research design, but should also explore major new issues identified during the course of research or analysis. The documentation gathered may raise important issues not previously considered, and further investigation may be important, particularly when contradictory information has been gathered. It is important to examine the implications of these new issues to ensure that they are investigated in a balanced way.

Questions that should be considered in analyzing the information include:

1. Has enough information been gathered to ánwser the questions that were posed?

2. Do the answers contradict one another? If so, it may be necessary to search for more evidence. If no additional evidence is available, judgements must be based on the available sources, weighing their biases. Conflicts of source materials should be noted.

In general, the more the researcher knows about the general historical period and setting, and limitations of the source materials under investigation, the better the individual is prepared to evaluate the information found in the documentary sources investigated. Peer review or consultation with other knowledgeable individuals about the information and the tentative conclusions can be an important part of the analysis.

Integrating Results

The results of documentation must be integrated into the planning process so that planning decisions are based on the best available informaiton. The new information is first assessed against the research design to determine whether the gathered information meets the defined objectives of the research. Then the relevant historic contexts, property types, and treatment goals for those contexts are all adjusted, as necessary, based on the historical documentation results.

Reporting Results

Reports should contain:

1. Summaries of the purpose of the documentation, the research design and methods and techniques of investigation.

2. Sources of facts or analyses so that other researchers can locate the information in its original context. Notation of any conflicts in source materials and how the individual performing the documentation interpreted these conflicts.

3. Sources consulted, including those expected to contain useful information and those that contained no information about the property(s).

4. Assessment of the accuracy, biases and historical perspective of all sources. This information and that identified in No. 3 may be provided in an annotated bibliography.

5. Discussion of major analyses and results, including conclusions regarding all major research issues identified in the research design, as well as important issues raised in the course of research. The analysis should be summarized in terms of its impact on interpretating the property's significance and expanding or altering the knowledge about the property and its context.

6. Researchers' interpretation of historical events or trends. These interpretations should be clearly identified.

Primary results should be preserved and made accessible in some manner, although they need not necessarily be contained in the report. At a minimum, the report should reference the location of notes and analyses.

Results of historical documentation should be made available for use in preservation planning and by the general public. Report formats may vary, depending on the audience and the anticipated uses of the documentation, but professionally accepted rules of report writing should be followed. If reports are of a technical nature, the format of the major scientific journal of the pertinent discipline may be the most appropriate format. Peer review of draft reports is one means of ensuring that state-of-the-art technical reports are produced.

Recommended Sources of Technical Information

Folklife and Fieldwork: A Layman's Introduction to Field Techniques. Peter Bartis. American Folklife Center, Washington, D.C., 1979.

Ordinary People and Everyday Life: Perspectives on the New Social History. James B. Gardnee and George Rollie Adams, editors, American Association for State and Local History, Nashville, Tennessee, 1983.

The Process of Field Research. Carl Fleischhauer and Charles K. Wolfe. American Folklife Center, Washington, D.C., 1981.

Researching Heritage Buildings. Margaret Carter. Ministry of the Environment, Ottawa, Canada, 1983.

Secretary of the Interior's Standards for Architectural and Engineering Documentation

These standards concern the development of documentation for historic buildings, sites, structures and objects. This documentation, which usually consists of measured drawings, photographs and written data, provides important information on a property's significance for use by scholars, researchers, preservationists, architects, engineers and others interested in preserving and understanding historic properties. Documentation permits accurate repair or reconstruction of parts of a property, records existing conditions for easements, or may preserve information about a property that is to be demolished.

These Standards are intended for use in developing documentation to be included in the Historic American Building Survey (HABS) and the Historic American Engineering Record (HAER) Collections in the Library of Congress. HABS/HAER, in the National Park Service, have defined specific requirements for meeting these Standards for their collections. The HABS/HAER requirements include information important to development of documentation for other purposes such as State or local archives

Standard I. Documentation Shall Adequately Explicate and Illustrate What is Significant or Valuable About the Historic Building, Site, Structure or Object Being Documented.

The historic significance of the building, site, structure or object identified in the evaluation process should be conveyed by the drawings, photographs and other materials that comprise documentation. The historical, architectural, engineering or cultural values of the property together with the purpose of the documentation activity determine the level and methods of documentation. Documentation prepared for submission to the Library of Congress must meet the HABS/HAER Guidelines.

Standard II. Documentation Shall be Prepared Accurately From Reliable Sources With Limitations Clearly Stated to Permit Independent Verification of the Information.

The purpose of documentation is to preserve an accurate record of historic properties that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Standard III. Documentation Shall be Prepared on Materials That are Readily Reproductible, Durable and in Standard Sizes.

The size and quality of documentation materials are important factors in the preservation of information for future use. Selection of materials should be based on the length of time expected for storage, the anticipated frequency of use and a size convenient for storage.

Standard IV. Documentation Shall be Clearly and Concisely Produced.

In order for documentation to be useful for future research, written materials must be legible and understandable, and graphic materials must contain scale information and location references.

Secretary of the Interior's Guidelines for Architectural and Engineering Documentation

Introduction

These Guidelines link the Standards for Architectural and Engineering Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Architectural Engineering Documentation. Agencies, organizations or individuals proposing to approach documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Definitions

These definitions are used in conjunction with these Guidelines:

Architectural Data Form—a one page HABS form intended to provide identifying information for accompanying HABS documentation.

Documentation—measured drawings, photographs, histories, inventory cards or other media that depict historic buildings, sites, structures or objects.

Field Photography—photography, other than large-format photography, intended for the purpose of producing documentation, usually 35mm.

Field Records—notes of measurements taken, field photographs and other recorded information intended for the purpose of producing documentation.

Inventory Card—a one page form which includes written data, a sketched site plan and a 35mm contact print dry-mounted on the form. The negative, with a separate contact sheet and index should be included with the inventory-card.

Large Format Photographs—photographs taken of historic buildings, sites, structures or objects where the negative is a 4 X 5", 5 X 7" or 8 X 10" size and where the photograph is taken with appropriate means to correct perspective distortion.

Measured Drawings—drawings produced on HABS or HAER formats depicting existing conditions or other relevant features of historic buildings, sites, structures or objects. Measured drawings are usually produced in ink on archivally stable material, such as mylar.

Photocopy—A photograph, with large-format negative, of a photograph or drawing.

Select Existing Drawings—drawings of historic buildings, sites, structures or objects, whether original construction or later alteration drawings that portray or depict the historic value or significance.

Sketch Plan—a floor plan, generally not to exact scale although often drawn from measurements, where the features are shown in proper relation and proportion to one another.

Goal of Documentation

The Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) are the national historical architectural and engineering documentation programs of the National Park Service that promote documentation incorporated into the HABS/HAER collections in the Library of Congress. The goal of the collections is to provide architects, engineers, scholars, and interested members of the public with comprehensive documentation of buildings, sites, structures and objects significant in American history and the growth and development of the built environment.

The HABS/HAER Collections: HABS/HAER documentation usually consists of measured drawings, photographs and written data that provide a detailed record which reflects a property's significance. Measured drawings and properly executed photographs act as a form of insurance against fires and natural disasters by permitting the repair and, if necessary, reconstruction of historic structures damaged by such disasters. Documentation is used to provide the basis for enforcing preservation easement. In addition, documentation is often the last means of preservation of a property; when a property is to be demolished, its documentation provides future researchers access to valuable information that otherwise would be lost.

HABE/HAER documentation is developed in a number of ways. First and most usually, the National Park Service employs summer teams of student architects, engineers, historians and architectural historians to develop HABS/HAER documentation under the supervision of National Park Service professionals. Second, the National Park Service produces HABS/HAER documentation, in conjunction with restoration or other preservation treatment, of historic buildings managed by the National Park Service. Third, Federal agencies, pursuant to Section 110(b) of the National Historic Preservation Act, as amended, record those historic properties to be demolished or substantially altered as a result of agency action or assisted action (referred to as mitigation projects). Fourth, individuals and organizations prepare documentation to HABS/HAER standards and donate that documentation to the HABS/HAER collections. For each of these programs,

different Documentation Levels will be set.

The Standards describe the fundamental principles of HABS/HAER documentation. They are supplemented by other material describing more specific guidelines, such as line weights for drawings, preferred techniques for architectural photography, and formats for written data. This technical information is found in the HABS/HAER Procedures Manual.

These Guidelines include important information about developing documentation for State or local archives. The State Historic Preservation Officer or the State library should be consulted regarding archival requirements if the documentation will become part of their collections. In establishing archives, the important questions of durability and reproducibility should be considered in relation to the purposes of the collection.

Documentation prepared for the purpose of inclusion in the HABS/HAER collections must meet the requirements below. The HABS/HAER office of the National Park Service retains the right to refuse to accept documentation for inclusion in the HABS/HAER collections when that documentation does not meet HABS/HAER requirements, as specified below.

Standard I: Content

1. *Requirement:* Documentation shall adequately explicate and illustrate what is significant or valuable about the historic building, site, structure or object being documented.

2. *Criteria:* Documentation shall meet one of the following documentation levels to be considered adequate for inclusion in the HABS/HAER collections.

a. Documentation Level I;

(1) Drawings: a full set of measured drawings depicting existing or historic conditions.

(2) Photographs: photographs with large-format negatives of exterior and interior views; photocopies with large format negatives of select existing drawings or historic views where available.

(3) Written data: history and description.

b. Documentation Level II;

(1) Drawings: select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on mylar.

(2) Photographs: photographs with large-format negatives of exterior and interior views, or historic views, where available.

(3) Written data: history and description.

c. Documentation Level III;

(1) Drawings: sketch plan.

(2) Photographs: photographs with large-format negatives of exterior and interior views.

(3) Written data: architectural data form.

d. Documentation Level IV: HABS/HAER inventory card.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* The HABS/HAER office retains the right to refuse to accept any documentation on buildings, site, structures or objects lacking historical significance. Generally, buildings, sites, structures or objects must be listed in, or eligible for listing in the National Register of Historic Places to be considered for inclusion in the HABS/HAER collections.

The kind and amount of documentation should be appropriate to the nature and significance of the buildings, site, structure or object being documented. For example, Documentation Level I would be inappropriate for a building that is a minor element of a historic district, notable only for streetscape context and scale. A full set of measured drawings for such a minor building would be expensive and would add little, if any, information to the HABS/HAER collections. Large format photography (Documentation Level III) would usually be adequate to record the significance of this type of building.

Similarly, the aspect of the property that is being documented should reflect the nature and significance of the building, site, structure or object being documented. For example, measured drawings of Dankmar Adler and Louis Sullivan's Auditorium Building in Chicago should indicate not only facades, floor plans and sections, but also the innovative structural and mechanical systems that were incorporated in that building. Large format photography of Gunston Hall in Fairfax County, Virginia, to take another example, should clearly show William Buckland's hand-carved moldings in the Palladian Room, as well as other views.

HABS/HAER documentation is usually in the form of measured drawings, photographs, and written data. While the criteria in this section have addressed only these media, documentation need not be limited to them. Other media, such as films of industrial processes, can and have been used to document historic buildings, sites, structures or objects. If other media are to be used, the HABS/HAER office should be contacted before recording.

The actual selection of the appropriate documentation level will vary, as discussed above. For mitigation documentation projects, this level will be selected by the National Park Service Regional Office and communicated to the agency responsible for completing the documentation. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks and the primary historic units of the National Park Service.

On occasion, factors other than significance will dictate the selection of another level of documentation. For example, if a rehabilitation of a property is planned, the owner may wish to have a full set of as-built drawings, even though the significance may indicate Level II documentation.

HABS Level I measured drawings usually depict existing conditions through the use of a site plan, floor plans, elevations, sections and construction details. HAER Level I measured drawings will frequently depict original conditions where adequate historical material exists, so as to illustrate manufacturing or engineering processes.

Level II documentation differs from Level I by substituting copies of existing drawings, either original or alteration drawings, for recently executed measured drawings. If this is done, the drawings must meet HABS/HAER requirements outlined below. While existing drawings are rarely as suitable as as-built drawings, they are adquate in many cases for documentation purposes. Only when the desirability of having as-built drawings is clear are Level I measured drawings required in addition to existing drawings. If existing drawings are housed in an accessible collection and cared for archivally, their reproduction for HABS/HAER may not be necessary. In other cases, Level I measured drawings are required in the absence of existing drawings.

Level III documentation requires a sketch plan if it helps to explain the structure. The architectural data form should supplement the photographs by explaining what is not readily visible.

Level IV documentation consists of completed HABS/HAER inventory cards. This level of documentation, unlike the other three levels, is rarely considered adequate documentation for the HABS/HAER collections but is undertaken to identify historic resources in a given area prior to additional, more comprehensive documentation.

Standard II: Quality

1. *Requirement:* HABS and HAER documentation shall be prepared accurately from reliable sources with limitations clearly stated to permit independent verification of information.

2. *Criteria:* For all levels of documentation, the following quality standards shall be met:

a. Measured drawings: Measured drawings shall be produced from recorded, accurate measurements. Portions of the building that were not accessible for measurement should not be drawn on the measured drawings, but clearly labeled as not accessible or drawn from available construction drawings and other sources and so identified. No part of the measured drawings shall be produced from hypothesis or non-measurement related activities. Documentation Level I measured drawings shall be accompanied by a set of field notebooks in which the measurements were first recorded. Other drawings, prepared for Documentation Levels II and III, shall include a statement describing where the original drawings are located.

b. Large format photographs: Large format photographs shall clearly depict the appearance of the property and areas of significance of the recorded building, site, structure or object. Each view shall be perspective-corrected and fully captioned.

c. Written history: Written history and description for Documentation Levels I and II shall be based on primary sources to the greatest extent possible. For Levels III and IV, secondary sources may provide adequate information; if not, primary research will be necessary. A frank assessment of the reliability and limitations of sources shall be included. Within the written history, statements shall be footnoted as to their sources, where appropriate. The written data shall include a methodology section specifying name of researcher, date of research, sources searched, and limitations of the project.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* The reliability of the HABS/HAER collections depends on documentation of high quality. Quality is not something that can be easily prescribed or quantified, but it derives from a process in which thoroughness and accuracy play a large part. The principle of independent verification HABS/HAER documentation is critical to the HABS/HAER collections

Standard III: Materials

1. *Requirement:* HABS and HAER documentation shall be prepared on materials that are readily reproducible for ease of access; durable for long storage; and in standard sizes for ease of handling.

2. *Criteria:* For all levels of documentation, the following material standards shall be met:

a. Measured Drawings:

Readily Reproducible: Ink on translucent material.

Durable: Ink on archivally stable materials.

Standard Sizes: Two sizes: 19 × 24" or 24 × 36".

b. Large Format Photographs:

Readily Reproducible: Prints shall accompany all negatives.

Durable: Photography must be archivally processed and stored. Negatives are required on safety film only. Resin-coated paper is not accepted. Color photography is not acceptable.

Standard Sizes: Three sizes: 4 × 5", 5 × 7", 8 × 10".

c. Written History and Description:

Readily Reproducible: Clean copy for xeroxing.

Durable: Archival bond required.

Standard Sizes: 8½ × 11".

d. Field Records:

Readily Reproducible: Field notebooks may be xeroxed. Photo identification sheet will accompany 35 mm negatives and contact sheets.

Durable: No requirement.

Standard Sizes: Only requirement is that they can be made to fit into a 9½ × 12" archival folding file.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* All HABS/HAER records are intended for reproduction; some 20,000 HABS/HAER records are reproduced each year by the Library of Congress. Although field records are not intended for quality reproduction, it is intended that they be used to supplement the formal documentation. The basic durability performance standard for HABS/HAER records is 500 years. Ink on mylar is believed to meet this standard, while color photography, for example, does not. Field records do not meet this archival standard, but are maintained in the HABS/HAER collections as a courtesty to the collection user.

Standard IV: Presentation

1. *Requirement:* HABS and HAER documentation shall be clearly and concisely produced.

2. *Criteria:* For levels of documentation as indicated below, the following standards for presentation will be used:

a. Measured Drawings: Level I measured drawings will be lettered mechanically (i.e., Leroy or similar) or in a handprinted equivalent style. Adequate dimensions shall be included on all sheets. Level III sketch plans should be neat and orderly.

b. Large format photographs: Level I photographs shall include duplicate photographs that include a scale. Level II and III photographs shall include, at a minimum, at least one photograph with a scale, usually of the principal facade

c. Written history and description: Data shall be typewritten on bond, following accepted rules of grammar.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

Architectural and Engineering Documentation Prepared for Other Purposes

Where a preservation planning process is in use, architectural and engineering documentation, like other treatment activities, are undertaken to achieve the goals identified by the preservation planning process. Documentation is deliberately selected as a treatment for properties evaluated as significant, and the development of the documentation program for a property follows from the planning objectives. Documentation efforts focus on the significant characteristics of the property, as defined in the previously completed evaluation. The selection of a level of documentation and the documentation techniques (measured drawings, photography, etc.) is based on the significance of the property and the management needs for which the documentation is being performed. For example, the kind and level of documentation required to record a historic property for easement purposes may be less detailed than that required as mitigation prior to destruction of the property. In the former case, essential documentation might be limited to the portions of the property controlled by the easement, for example, exterior facades; while in the latter case, significant interior architectural features and non-visible structural details would also be documented.

The principles and content of the HABS/HAER criteria may be used for guidance in creating documentation requirements for other archives. Levels of documentation and the durability and sizes of documentation may vary depending on the intended use and the repository. Accuracy of documentation should be controlled by assessing the reliability of all sources and making that assessment available in the archival record; by describing the limitations of the information available from research and physical examination of the

property: and by retaining the primary data (field measurements and notebooks) from which the archival record was produced. Usefulness of the documentation products depends on preparing the documentation on durable materials that are able to withstand handling and reproduction, and in sizes that can be stored and reproduced without damage.

Recommended Sources of Technical Information

Recording Historic Buildings. Harley J. McKee. Government Printing Office, 1970. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO number 024-005-0235-9.

HABS/HAER Procedures Manual. Historic American Buildings Survey/Historic American Engineering Record, National Park Service, 1980. Washington, D.C.

Photogrammetric Recording of Cultural Resources. Perry E. Borchers. Technical Preservation Services, U.S. Department of the Interior, 1977. Washinton, D.C.

Rectified Photography and Photo Drawings for Historic Preservation. J. Henry Chambers. Technical Preservation Services, U.S. Department of the Interior, 1975. Washington, D.C.

Secretary of the Interior's Standards for Archeological Documentation

Archeological documentation is a series of actions applied to properties of archeological interest. Documentation of such properties may occur at any or all levels of planning, identification, evaluation or treatment. The nature and level of documentation is dictated by each specific set of circumstances. Archeological documentation consists of activities such as archival research, observation and recording of above-ground remains, and observation (directly, through excavation, or indirectly, through remote sensing) of below-ground remains. Archeological documentation is employed for the purpose of gathering information on individual historic properties or groups of properties. It is guided by a framework of objectives and methods derived from the planning process, and makes use of previous planning decisions, such as those on evaluation of significance. Archeological documentation may be undertaken as an aid to various treatment activities, including research, interpretation, reconstruction, stabilization and data recovery when mitigating archeological losses resulting from construction. Care should be taken to assure that documentation efforts do not duplicate previous efforts.

Standard I. Archeological Documentation Activities Follow an Explicit Statement of Objectives and Methods That Responds to Needs Identified in the Planning Process

Archeological research and documentation may be undertaken to fulfill a number of needs, such as overviews and background studies for planning, interpretation or data recovery to mitigate adverse effects. The planning needs are articulated in a statement of objectives to be accomplished by the archeological documentation activities. The statement of objectives guides the selection of methods and techniques of study and provides a comparative framework for evaluating and deciding the relative efficiency of alternatives. Satisfactory documentation involves the use of archeological and historical sources, as well as those of other disciplines. The statement of objectives usually takes the form of a formal and explicit research design which has evolved from the interrelation of planning needs, current knowledge, resource value and logistics.

Standard II. The Methods and Techniques of Archeological Documentation are Selected To Obtain the Information Required by the Statement of Objectives

The methods and techniques chosen for archeological documentation should be the most effective, least destructive, most efficient and economical means of obtaining the needed information. Methods and techniques should be selected so that the results may be verified if necessary. Non-destructive techniques should be used whenever appropriate. The focus on stated objectives should be maintained throughout the process of study and documentation.

Standard III. The Results of Archeological Documentation are Assessed Against the Statement of Objectives and Integrated Into the Planning Process

One product of archeological documentation is the recovered data; another is the information gathered about the usefulness of the statement of objectives itself. The recovered data are assessed against the objectives to determine how they meet the specified planning needs. Information related to archeological site types, distribution and density should be integrated in planning at the level of identification and evaluation. Information and data concerning intra-site structure may be needed for developing mitigation strategies and are appropriately integrated at this level of planning. The results of the data analyses are integrated into the body of current knowledge. The utility of the method of approach and the particular techniques which were used in the investigation (i.e. the research design) should be assessed so that the objectives of future documentation efforts may be modified accordingly.

Standard IV. The Results of Archeological Documentation are Reported and Made Available to the Public

Results must be accessible to a broad range of users including appropriate agencies, the professional community and the general public. Results should be communicated in reports that summarize the objectives, methods, techniques and results of the documentation activity, and identify the repository of the materials and information so that additional detailed information can be obtained, if necessary. The public may also benefit from the knowledge obtained from archeological documentation through pamphlets, brochures, leaflets, displays and exhibits, or by slide, film or multi-media productions. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties. Curation arrangements sufficient to preserve artifacts, specimens and records generated by the investigation must be provided for to assure the availability of these materials for future use.

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

Archeological Documentation Objectives
Documentation Plan
Methods
Reporting Results
Curation
Recommended Sources of Technical Information

1. Collection of base-line data;

2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);

3. Preservation or illustration of significance which has been identified for treatment by the planning process; or

4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or non-aqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other types of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

Archeological Documentation Objectives

The term "archeological documentation" is used here to refer specifically to any operation that is performed using archeological techniques as a means to obtain and record evidence about past human activity that is of importance to documenting history and prehistory in the United States. Historic and prehistoric properties may be important for the data they contain, or because of their association with important persons, events, or processes, or because they represent architectural or artistic values, or for other reasons. Archeological documentation may be an appropriate option for application not only to archeological properties, but to above-ground structures as well, and may be used in collaboration with a wide range of other treatment activities.

If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process—such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments: Archeological documentation is appropriate for achieving any of various goals, including:

Documentation Plan

Research Design: Archeological documentation can be carried out only after defining explicit goals and a methodology for reaching them. The goals of the documentation effort directly reflect the goals of the preservation plan and the specific needs identified for the relevant historic contexts. In the case of problem oriented archeological research, the plan usually takes the form of a formal research design, and includes, in addition to the items below, explicit statements of the problem to be addressed and the methods or tests to be applied. The purpose of the statement of objectives is to explain the rationale behind the documentation effort; to define the scope of the investigation; to identify the methods, techniques, and procedures to be used; to provide a schedule for the activities; and to permit comparison of the proposed research with the results. The research design for an archeological documentation effort follows the same guidelines as those for identification (see the Guidelines for Identification) but has a more property-specific orientation.

The research design should draw upon the preservation plan to identify:

1. Evaluated significance of the property(ies) to be studied;

2. Research problems or other issues relevant to the significance of the property;

3. Prior research on the topic and property type; and how the proposed documentation objectives are related to previous research and existing knowledge;

4. The amount and kinds of information (data) required to address the documentation objectives and to make reliable statements, including at what point information is redundant and documentation efforts have reached a point of diminishing returns;

5. Methods to be used to find the information; and

6. Relationship of the proposed archeological investigation to anticipated historical or structural documentation, or other treatments.

The primary focus of archeological documentation is on the data classes that are required to address the specified documentation objectives. This may mean that other data classes are deliberately neglected. If so, the reasons for such a decision should be carefully justified in terms of the preservation plan.

Archeological investigations seldom are able to collect and record all possible data. It is essental to determine the point at which further data recovery and documentation fail to improve the usefulness of the archeological information being recovered. One purpose of the research design is to estimate those limits in advance and to suggest at what point information becomes duplicative. Investigation strategies should be selected based on these general principles, considering the following factors:

1. Specific data needs;

2. Time and funds available to secure the data; and

3. Relative cost efficiency of various strategies.

Responsiveness to the concerns of local groups (e.g., Native American groups with ties to specific properties) that was built into survey and evaluation phases of the preservation plan, should be maintained in archeological investigation, since such activity usually involves site disturbance. The research design, in addition to providing for appropriate ethnographic research and consultation, should consider concerns voiced in previous phases. In the absence of previous efforts to coordinate with local or other interested groups, the research design should anticipate the need to initiate appropriate contracts and provide a mechanism for responding to sensitive issues, such as the possible uncovering of human remains or discovery of sacred areas.

The research design facilitates an orderly, goal directed and economical project. However, the research design must be flexible enough to allow for examination of unanticipated but important research opportunities that arise during the investigation.

Documentation Methods

Background Review: Archeological documentation usually is preceded by, or integrated with historical research (i.e. that intensive background information gathering including identification of previous archeological work and inspection of museum collections; gathering relevant data on geology, botany, urban geography and other related disciplines; archival research; informant interviews, or recording of oral tradition, etc.).

Depending on the goals of the archeological documentation, the background historical and archeological research may exceed the level of research accomplished for development of the relevant historic contexts or for identification and evaluation, and focuses on the unique aspects of the property to be treated. This assists in directing the investigation and locates a broader base of information than that contained in the property itself for response to the documentation goals. This activity is particularly important for historic archeological properties where information sources other than the property itself may be critical to preserving the significant aspects of the property. (See the Secretary of the Interior's Standards and Guidelines for Historical Documentation for discussion of associated research activities.)

Field Studies: The implementation of the research design in the field must be flexible enough to accommodate the discovery of new or unexpected data classes or properties, or changing field conditions. A phased approach may be appropriated when dealing with large complex properties or groups of properties, allowing for changes in emphasis or field strategy, or termination of the program, based on analysis of recovered data at the end of each phase. Such an approach permits the confirmation of assumptions concerning property extent, content or organization which had been made based on data gathered from identification and evaluation efforts, or the adjustment of those expectations and resulting changes in procedure. In some cases a phased approach may be necessary to gather sufficient data to calculate the necessary sample size for a statistically valid sample. A phased documentation program may often be most cost-effective, in allowing for early termination of work if the desired objectives cannot be achieved.

Explicit descriptive statements of and justification for field study techniques are important to provide a means of evaluating results. In some cases, especially those employing a sampling strategy in earlier phases (such as identification or evaluation), it is possible to estimate parameters of certain classes of data in a fairly rigorous statistical manner. It is thus desirable to maintain some consistency in choice of sampling designs throughout multiple phases of work at the same property. Consistency with previously employed areal sampling frameworks also improves potential replication in terms of later locating sampled and unsampled areas. It often is desirable to estimate the nature and frequency of data parameters based on existing information or analogy to other similar cases. These estimates may then be tested in field studies.

An important consideration in choosing methods to be used in the field studies should be assuring full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques and stratigraphic or inter-site relationships.

To the extent feasible, chosen methodologies and techniques should take into account the possibility that future researchers will need to use the recovered data to address problems not recognized at the time the data were recovered. The field operation may recover data that may not be fully analyzed; this data, as well as the data analyzed, should be recorded and preserved in a way to facilitate future research.

A variety of methodologies may be used. Choices must be explained, including a measure of cost-effectiveness relative to other potential choices. Actual results can then be measured against expectations, and the information applied later in similar cases.

Destructive methods should not be applied to portions or elements of the property if nondestructive methods are practical. If portions or elements of the property being documented are to be preserved in place, the archeological investigation should employ methods that will leave the property as undisturbed as possible. However, in cases where the property will be destroyed by, for example, construction following the investigation, it may be most practical to gather the needed data in the most direct manner, even though that may involve use of destructive techniques.

Logistics in the field, including the deployment of personnel and materials and the execution of sampling strategies, should consider site significant, anticipated location of most important data, cost effectiveness, potential time limitations and possible adverse environmental conditions.

The choice of methods for recording data gathered in the field should be based on the research design. Based on that statement, it is known in advance of field work what kinds of information are needed for analysis; record-keeping techniques should focus on these data. Field records should be maintained in a manner that permits independent interpretation in so far as possible. Record-keeping should be standardized in format and level of detail.

Archeological documentation should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. When the general public is directly involved in archeological documentation activities, provision should be made for training and supervision by qualified professionals. (See the Professional Qualifications Standards.)

Analysis: Archeological documentation is not completed with field work; analysis of the collected information is an integral part of the documentation activity, and should be planned for in the research design. Analytical techniques should be selected that are relevant to the objectives of the investigation. Forms of analysis that may be appropriate, depending on the type of data recovered and the objectives of the investigation, include but are not limited to: studying artifact types and distribution; radiometric and other means of age determination; studies of soil stratigraphy; studies of organic matter such as human remains, pollen, animal bones, shells and seeds; study of the composition of soils and study of the natural environment in which the property appears.

Reporting Results

Report Contents: Archeological documentation concludes with written report(s) including minimally the following topics:

1. Description of the study area;
2. Relevant historical documentation/background research;
3. The research design;
4. The field studies as actually implemented, including any deviation from the research design and the reason for the changes;
5. All field observations;
6. Analyses and results, illustrated as appropriate with tables, charts, and graphs;
7. Evaluation of the investigation in terms of the goals and objectives of the investigation, including discussion of how well the needs dictated by the planning process were served;
8. Recommendations for updating the relevant historic contexts and planning goals and priorities, and generation of new or revised information needs;
9. Reference to related on-going or proposed treatment activities, such as structural documentation, stabilization, etc.; and

10. Information on the location of original data in the form of field notes, photographs, and other materials.

Some individual property information, such as specific locational data, may be highly sensitive to disclosure, because of the threat of vandalism. If the objectives of the documentation effort are such that a report containing confidential information such as specific site locations or information on religious practices is necessary, it may be appropriate to prepare a separate report for public distribution. The additional report should summarize that information that is not under restricted access in a format most useful to the expected groups of potential users. Peer review of draft reports is recommended to ensure that state-of-the-art technical reports are produced.

Availability: Results must be made available to the full range of potential users. This can be accomplished through a variety of means including publication of results in monographs and professionals journals and distribution of the report to libraries or technical clearinghouses such as the National Technical Information Service in Springfield, Virginia.

Curation

Archeological specimens and records are part of the documentary record of an archeological site. They must be curated for future use in research, interpretation, preservation, and resource management activities. Curation of important archeological specimens and records should be provided for in the development of any archeological program or project.

Archeological specimens and records that should be curated are those that embody the information important to history and prehistory. They include artifacts and their associated documents, photographs, maps, and field notes; materials of an environmental nature such as bones, shells, soil and sediment samples, wood, seeds, pollen, and their associated records; and the products and associated records of laboratory procedures such as thin sections, and sediment fractions that result from the analysis of archeological data.

Satisfactory curation occurs when:

1. Curation facilities have adequate space, facilities, and professional personnel;

2. Archeological specimens are maintained so that their information values are not lost through deterioration, and records are maintained to a professional archival standard;

3. Curated collections are accessible to qualified researchers within a reasonable time of having been requested; and

4. Collections are available for interpretive purposes, subject to reasonable security precautions.

Recommended Sources of Technical Information

Archeomagnetism: A Handbook for the Archeologist. Jeffrey L. Eighmy, U.S. Department of the Interior, Washington, D.C., 1980.

The Curation and Management of Archeological Collections: A Pilot Study. Cultural Resource Management Series, U.S. Department of the Interior, September 1980.

Human Bones and Archeology. Douglas H. Ubelaker. Interagency Archeological Services, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C., 1980. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Manual for Museums. Ralph H. Lewis, National Park Service, U.S. Department of the Interior, 1976.

Treatment of Archeological Properties: A Handbook. Advisory Council on Historic Preservation, Washington D.C., 1980.

Secretary of the Interior's Standards for Historic Preservation Projects

General Standards for Historic Preservation Projects

The following general standards apply to all treatments undertaken on historic properties listed in the National Register.

1. Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

5. Distinctive architectural features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

Specific Standards for Historic Preservation Projects

The following specific standards for each treatment are to be used in conjunction with the eight general standards and, in each case, begin with number 9. For example, in evaluating acquisition projects, include the eight general standards plus the four specific standards listed under standards for Acquisition. The specific standards differ from those published for use in Historic Preservation Fund grant-in-aid projects (36 CFR Part 68) in that they discuss more fully the treatment of archeological properties.

Standards for Acquisition

9. Careful consideration shall be given to the type and extent of property rights which are required to assure the preservation of the historic resource. The preservation objectives shall determine the exact property rights to be acquired.

10. Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.

11. The purchase of less-than-fee-simple interests, such as open space or facade easements, shall undertaken when a limited interest achieves the preservation objective.

12. Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archeological, architectural or cultural significance.

Standard for Protection

9. Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

10. Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.

11. If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

Standards for Stabilization

9. Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

10. Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance and significance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical or archeological quality of the property, except where concealment would result in the alteration or destruction of historically or archeologically significant material or spaces. Accurate documentation of stabilization procedures shall be kept and made available for future needs.

11. Stabilization work that will result in ground disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Preservation

9. Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Archeological sites shall be preserved undisturbed whenever feasible and practical. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.

10. Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.

11. Use of destructive techniques, such as archeological excavation, shall be limited to providing sufficient information for research, interpretation and management needs.

Standards for Rehabilitation

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

Standards for Restoration

9. Every reasonable effort shall be made to use a property for is originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.

10. Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed wherever possible so as not to intrude or detract from the property's aesthetic and historical qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.

11. Restoration work such as the demolition of non-contributing additions that will result in ground or structural disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface or structural features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Reconstruction

9. Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable. Reconstruction of archeological sites generally is not appropriate.

10. Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical or archeological documentation exists to insure an accurate reproduction of the original.

11. The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural or archeological features shall be based upon accurate duplication of original features substantiated by physical or documentary evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.

12. Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with professional methods and techniques.

13. Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

Secretary of the Interior Guidelines for Historic Preservation Projects

The guidelines for the Secretary of the Interior's Standards for Historic Preservation Projects, not included here because of their length, may be obtained separately from the National Park Serivce.

Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of fulltime work but

may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture.

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

The minimum professional qualifications historic in architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

Preservation Terminology

Acquisition—the act or process of acquiring fee title or interest other than fee title of real property (including acquisition of development rights or remainder interest).

Comprehensive Historic Preservation Planning—the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration and treatment of historic properties, and setting priorities for accomplishing preservation activities.

Historic Context—a unit created for planning purposes that groups information about historic properties based on a shared theme, specific time period and geographical area.

Historic Property—a district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture at the national, State, or local level.

Integrity—the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Intensive Survey—a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance within specific historic contexts.

Inventory—a list of historic properties determined to meet specified criteria of significance.

National Register Criteria—the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

Preservation (treatment)—the act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

Property Type—a grouping of individual properties based on a set of shared physical or associative characteristics.

Protection (treatment)—the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archeological sites, the protective measure may be temporary or permanent.

Reconnaissance Survey—an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Reconstruction (treatment)—the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or any part thereof, as it appeared at a specific period of time.

Rehabilitation (treatment)—the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

Research design—a statement of proposed identification, documentation, investigation, or other treatment of a historic property that identifies the project's goals, methods and techniques, expected results, and the relationship of the expected results to other proposed activities or treatments.

Restoration—the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time

by means of the removal of later work or by the replacement of missing earlier work.

Sample Survey—survey of a representative sample of lands within a given area in order to generate or test predictions about the types and distributions of historic properties in the entire area.

Stabilization (treatment)—the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

Statement of objectives—see Research design.

Dated: September 26, 1983.

Russell E. Dickenson,

Director, National Park Service.

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Errata Sheet

ARCHEOLOGY AND HISTORIC PRESERVATION; SECRETARY OF THE INTERIOR'S STANDARDS AND GUIDELINES

FEDERAL REGISTER, Vol. 48, No. 190, Part IV.

In the Guidelines for Archeological Documentation, the section titled "Archeological Documentation Objectives" was published out of sequence. The correct order of the material on pages 44734 and 44735 is as follows:

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

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Archeological Documentation Objectives

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If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process—such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments: Archeological documentation is appropriate for achieving any of various goals, including:

1. Collection of base-line data;
2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);
3. Preservation or illustration of significance which has been identified for treatment by the planning process; or
4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or non-aqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other type of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

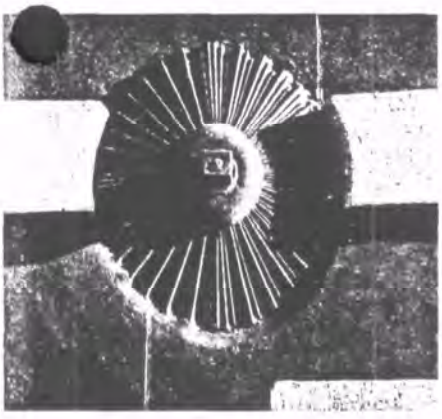
Documentation Plan

Attachment 4

ATTACHMENT #4

WORKING WITH
SECTION 106

IDENTIFICATION OF HISTORIC PROPERTIES:
A Decisionmaking Guide for Managers



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Cover photos:

Tie rod, the U.S. Mint, New Orleans. (Marcia Artmann Smith, photographer.)

Eroding midden, Swansboro, North Carolina, archeological site. (Photo courtesy of the U.S. Army Corps of Engineers.)

Columbia River Highway, Oregon, listed on the National Register of Historic Places in 1983. (Photograph courtesy of Oregon Department of Transportation/James Norman, photographer.)

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Preface

Identification is a key part of any program of historic preservation. Without identification, historic properties cannot be thoughtfully preserved, rehabilitated, or considered in planning modern programs of development and land use.

Over the years, a number of publications have been issued dealing with the processes and results of identification. Notable among these are *Secretary of the Interior's Standards and Guidelines for Identification* and the more detailed *Guidelines for Local Surveys: A Basis for Preservation Planning* and *The Archeological Survey: Methods and Uses*, all published by the Department of the Interior.

Questions continue to arise, however, about how one decides to carry out a program of identification, and what approaches to use. This publication is designed to answer these questions, thus filling an important gap in the identification literature.

The Advisory Council on Historic Preservation and others first perceived a need for this publication during the process of revising the Council's regulations, "Protection of Historic Properties" [36 CFR Part 800], which implement Section 106 of the National Historic Preservation Act of 1966 (NHPA).

Once the regulatory revisions were complete, the Council turned its attention to developing this and other guideline documents needed to make the Section 106 review process work more smoothly. The National Park Service, recognizing that this guidance would have applications well beyond Section 106 review, participated actively in its development; the two agencies d[redacted]d that its joint issuance would be appropriate.

This publication was developed under the supervision of a task force of Council members headed by Janice S. Golec, deputy assistant secretary for program development, Department of Housing and Urban Development (HUD). Members of the task force, in addition to the Department of the Interior and HUD, included the Honorable Michael Newbold Castle, governor of Delaware; Bruce Nestande, citizen member of the Council from Costa Mesa, California; Clifton Caldwell, historic preservation expert member of the Council from Richardson, Texas; and Avery C. Faulkner, FAIA, historic preservation expert member from Washington, DC. The primary author of this publication is Thomas F. King, Ph.D., director of the Council's Office of Cultural Resource Preservation. Major drafting assistance was provided by James Brennan, director, Environmental Management Division, Office of Environment and Energy, HUD, and Dale Lanzone, former special assistant to the director, National Park Service, Department of the Interior, and now director of arts and historic preservation, General Services Administration.

It is our hope that this publication will be widely used not only in helping Federal agencies and others carry out their identification responsibilities under Section 106, but also in conducting historic preservation programs at all levels of government and in the private sector.

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IDENTIFICATION OF HISTORIC PROPERTIES:
A Decisionmaking Guide for Managers

I. Introduction

The National Historic Preservation Act (NHPA), other Federal authorities, and a growing number of State and local laws, ordinances, and policies require or encourage the consideration of historic properties in the planning and implementation of land use and development projects. In order for such consideration to occur, historic properties **must be identified**, preferably at an early planning stage, and in an orderly manner.

What Section 106 requires of Federal agencies

Section 106 of NHPA requires that Federal agencies take into account the effects of their undertakings on historic properties. Procedures for complying with Section 106 are set forth in the Council's regulations, "Protection of Historic Properties" [36 CFR Part 800, 1986]. Figure 1 gives a brief overview of Section 106 review.

Section 106 and the Council's regulations have served as models for historic preservation and environmental legislation and regulations at the State and local levels. They have also been internalized by many Federal agencies as part of agency environmental review systems. Thus, in addition to their specific application to the review of Federal undertakings, the principles embodied in Section 106 are broadly applicable to the processes of historic preservation planning in general.

Identification of historic properties

Identifying historic properties is a fundamental step in determining what properties may be affected by an undertaking, and is an essential step in taking into account the specific effects the undertaking may have. The Council's regulations require any Federal agency considering an undertaking to "make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register [of Historic Places]" [36 CFR § 800.4(b)].

This publication is designed to assist managers in identifying historic properties. It is based on the experience of the Advisory Council on Historic Preservation and the Department of the Interior in considering historic properties under Section 106 of NHPA and related Federal authorities.

The Council and the Department of the Interior recognize that undertakings and their potential effects on historic properties vary greatly, as do the techniques, processes, and levels of effort appropriate for acquiring information about such properties. For this reason, the Council's regulations, at § 800. 3(b), call for "flexible application" of Section 106 review and the concepts in this publication should be applied flexibly as well. This publication sets out basic principles and approaches that should be considered when designing an effort to identify his-

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow.

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures, or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not ordinarily necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- o No effect: the undertaking will not affect historic properties;
- o No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;
- o Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are

- o Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;
- o Counterpart regulations developed by an agency and approved by the Council;
- o An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

toric properties, and discusses how to apply these principles and approaches under varying circumstances.

Other guidance materials

This guidance refers repeatedly to the *Secretary of the Interior's Standards and Guidelines for Identification*, which is the Federal Government's basic technical standards and guidelines for the identification of historic properties. First published as part of *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, Standards and Guidelines for Identification* should be used to supplement this publication where specific technical guidance is needed. Bibliography information about these materials is provided in Appendix A.

II. Identification principles

Managers should observe the following basic principles when determining what kind of identification effort is appropriate for a specific land-use or development action, and when establishing agency procedures to govern the review of undertakings. Figure 2 lists these basic principles.

Figure 2: Identification principles

Identification efforts should

A. Be consistent with national historic preservation policy.

B. Be reasonable with reference to the nature of the undertaking and its likely effects.

C. Provide for consulting authorities and for resolving disputes over methods and approaches.

D. Make use of and build on existing information and on methods agreed upon or used during previous such efforts.

E. Be multidisciplinary.

For further discussion of these principles, see part II of this report.

A. Identification efforts should be consistent with national historic preservation policy.

Discussion: Section 110(d) of NHPA requires that Federal agencies, to the extent "consistent with the agency's mission and mandates," conduct "agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act, and give consideration to programs and projects which will further the purposes of this Act."

It follows that an agency's identification efforts, among its other programs, should be made consistent with the act's purposes, and made to advance the act's purposes, to the extent feasible given the agency's mission and mandates.

Recommended measures: An agency should

Coordinating identification efforts with SHPOs, State historic preservation plans, and other agencies

1. Carry out identification efforts in a manner that assists the State Historic Preservation Officer (SHPO) in fulfilling his/her responsibility under § 101(b)(3)(A) of NHPA to "direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties," by

a. using identification methods recommended by the SHPO, provided such methods are consistent with these guidelines and the *Standards and Guidelines for Identification*;

b. consulting with the SHPO in designing an identification effort, and in evaluating its results;

c. when appropriate, conducting identification efforts through the SHPO, or using specialists who meet standards acceptable to the SHPO;

d. recording identification results, including properties recorded, on forms appropriate for incorporation into the State inventory;

e. providing SHPOs with identification results.

2. Identify historic properties and evaluate their significance with reference, where applicable, to the State historic preservation plan developed by the SHPO pursuant to Section 101(b)(3)(C) of NHPA.

3. Coordinate identification efforts with those of other agencies, and use identification methods compatible with those of other agencies, provided such methods are consistent with these guidelines and the *Standards and Guidelines for Identification*, in order to help advance the policy of intergovernmental cooperation in historic preservation set forth in Section 2 of NHPA.

Section 110(a)(2) of NHPA

4. Where federally owned lands or structures are involved, conduct identification efforts in a manner consistent with the requirements of Section 110(a)(2) of NHPA and the Department of the Interior's *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act.*

5. Carry out identification efforts in cooperation with members of the public interested in the preservation of historic properties, pursuant to Sections 1(b)(7)

and 2(5) of NHPA and as suggested in the Council publication *Public Participation in Section 106 Review: A Guide for Agency Officials*.

B. Identification efforts should be reasonable with reference to the nature of the undertaking and its likely effects.

Discussion: 36 CFR § 800.4(b) requires "a reasonable and good faith effort" on the part of Federal agencies to identify properties on or eligible for inclusion in the National Register. An essential attribute of reasonableness is that the identification effort be responsive to the kind of undertaking involved and the kinds of effects the undertaking is likely to create.

Similarly, 36 CFR § 800.3(b) calls for "flexible application" of Section 106 review. This means that identification efforts, like other aspects of the review process, should be appropriate to the type of undertaking and its potential to affect historic properties, and to the kinds of effects anticipated.

Recommended measures:

The scope and nature of an identification effort

1. The scope and nature of an agency's identification effort should reflect

a. the likelihood that historic properties exist within areas subject to effect, and the probable nature and significance of such properties;

b. the likelihood that such properties retain their historic, cultural, and/or architectural integrity, given what is known about historic and recent modification of land or structures in the area;

c. the nature and severity of effects reasonably expectable as a result of the type of undertaking involved, including both effects that will occur as the immediate result of the undertaking, or near the site of the undertaking, and those that may occur at a later time or greater distance, provided the latter are reasonably foreseeable;

d. the nature of Federal involvement in or control over the undertaking.

Developing identification strategies for an agency's typical activities

2. Agencies should develop identification strategies for the kinds of undertakings in which they chiefly engage and, where possible, for the geographic areas in which they carry them out. The strategies should define those kinds of undertakings that may require no identification work because of their limited potential to affect historic properties. The strategies should also establish identification measures appropriate to the different kinds of undertakings for which such measures may be needed. For example, if a given kind of undertaking affects buildings but never results in ground disturbance, identification of historic buildings and structures may be needed when planning such an undertaking, but identification of archeological sites may not.

When an agency plans to develop such identification strategies, it should do so in cooperation with the SHPO and other authorities it deems appropriate, particularly in cases where the strategy will be designed for areas or subregions within a particular State. Understanding and acceptance of identification

strategies by the agency and the SHPO in advance should help later, when specific undertakings move through the Section 106 review process.

C. An agency's program for identification should provide for consulting authorities and for resolving disputes over methods and approaches.

Discussion: The regulations require consultation with the State Historic Preservation Officer at the beginning of an identification effort [36 CFR § 800.4(a)(1)(ii)] and as the effort progresses [36 CFR § 800.4(b) and (c)]. They also require that agencies seek information from others "likely to have knowledge of or concerns with historic properties in the area."

These requirements are meant to ensure that each identification effort fully uses the results of previous identification work, is as comprehensive as needed, and is developed and carried out with the advice and assistance of knowledgeable persons. Considering the multifaceted and often hard-to-interpret nature of historic properties, it should be no surprise that disagreements may arise between such knowledgeable people, or between them and the agency, about how an identification effort should be structured. Agencies should anticipate the possibility of such disagreements, and be prepared to resolve them in ways that ensure effective and reasonable identification.

Recommended measures:

Contacting individuals likely to have knowledge or concerns about historic properties

1. Agencies that carry out continuing identification efforts or repeated undertakings in a particular region, community, or neighborhood should establish contact with people likely to have knowledge of or concerns about historic properties, so that they can be consulted efficiently during particular identification projects. (For more information, see the Council's publication *Public Participation in Section 106 Review: A Guide for Agency Managers.*) Such systems of interaction with knowledgeable parties can be embodied in a Programmatic Agreement with the Council established pursuant to 36 CFR § 800.13, but such an agreement is not necessary for this purpose.

2. Agencies should establish working relationships with SHPOs to foster cooperation during identification and evaluation of historic properties. Early contact with the SHPO enables the agency to review baseline data sources such as the State historic properties inventory and comprehensive historic preservation plan or recognized local plans, and to review and consider SHPO recommendations about identification methods and priorities.

Resolving disagreements about how identification should be done

3. Where disputes arise about how identification should be done, the disputing parties should consult to resolve the disagreements.

4. Where consultation does not resolve a disagreement, the advisory opinion of the Council or of the Keeper of the National Register on behalf of the Secretary of the Interior can be sought as a basis for making a final decision as to appropriate identification methodology.

D. An identification effort should make use of and build on existing information and on methods agreed upon or used during previous such efforts.

Discussion: Managers should take care to avoid conducting redundant or otherwise unnecessary identification efforts. This requires that already-available information be used to plan identification efforts, and to establish the level and kinds of efforts needed. Such information may include general data on the area's history and prehistory, information on its historical and contemporary environment and patterns of land or building use, and the results of previous identification efforts. On the basis of such information it should be possible to decide whether field survey or other primary research is needed, and if so, to design the work needed in the most efficient manner.

It is also appropriate for agencies with continuing or recurrent identification needs in a given area to work with the SHPO, perhaps local preservation commissions, and other knowledgeable parties to establish standard methods and procedures which can then be applied in individual identification efforts as needed.

Recommended measures:

1. Agencies that carry out continuing identification efforts or repeated undertakings in a particular region, community, or neighborhood should consult with the SHPO(s) and local preservation commissions to establish standardized approaches to identification, and to develop systems to ensure that appropriate background information and the results of previous identification efforts can be readily consulted when planning new projects.

2. An early step in each identification effort should be to review relevant background information and, based on this information, to establish what level and kind of identification effort is appropriate.

E. An identification effort should be multidisciplinary.

Discussion: A great variety of historic property types may be eligible for inclusion in the National Register. Examples include historic homes, commercial areas, residential neighborhoods, industrial complexes, archeological sites of both historic and prehistoric age, ships, railroad facilities including engines and tracks, airplanes, prehistoric rock art, parks and other designed landscapes, farms and other rural landscapes, and places of traditional religious-cultural importance to American Indian and other ethnic groups. As a result, an identification effort should draw on the services of professionals and other specialists trained in the recognition and evaluation of the historic property types that are likely to occur in the area of potential effects.

Recommended measures:

1. Agencies should establish sufficient internal staff capacity at headquarters and field office levels to oversee the identification and evaluation of historic

properties, even if most actual identification efforts are carried out by others under contract.

Using a variety of professionals and specialists in identification effort

2. Both agency staff composition and the composition of teams responsible for individual identification efforts should reflect the range of historic property types with which the agency is likely to need to deal. For example, land-managing agencies most frequently deal with archeological sites, and thus can justify having historic preservation staffs in which archeologists are numerically predominant. Those that sometimes need to address American Indian cultural properties, however, should have reasonable access to cultural anthropologists; those that deal with rural landscapes should have access to folklorists, anthropologists, and landscape architects; and those that sometimes encounter historic cabins, mining structures or railroads should have access to historians, architectural historians, and industrial historians.

3. Where a team approach is warranted, the appropriate composition of the team responsible for a given identification effort should be established in consultation with the SHPO [36 CFR § 800.4(a)(1)(ii)].

III. Designing an identification effort: a decisionmaking guide

The following outline recommends steps for deciding on the scope and nature of an identification effort. Applied to a proposed Federal, federally assisted, or federally licensed undertaking, this outline should produce a reasonable decision about the kind of identification effort needed. As noted in the introduction to these guidelines, although the following steps refer primarily to the Council's regulations, and hence to Section 106 review, they are also logically applicable to historic property identification efforts required by other authorities.

A. Standard decisionmaking process for identification

Determining that a project or program is an undertaking

Managers should understand that the historic property identification process **follows** an agency's determination that a given program or project proposal constitutes an undertaking within the Council's definition of the term [36 CFR § 800.2(o)]. The determination that an action is an undertaking does **not** require the knowledge that historic properties are present. An agency determines that a given proposal is an undertaking based **solely** on that proposal's inherent ability to affect historic properties. An agency action that involves the demolition of buildings, for example, is always an undertaking because it has the potential to demolish historic buildings. Similarly, an agency action that involves land disturbance is always an undertaking because it has the potential to disturb land containing archeological sites or other historic properties. Actions with less obvious destructive potential may or may not be undertakings, depending on the actions' nature, not on the presence or absence of historic properties.

In some cases, once an agency has decided that an action is an undertaking and has defined its area of potential effects, the agency will find that the area contains

no historic properties. In other cases, the agency will find that--although historic properties are present--the undertaking will have no effect on them. These eventualities do not mean that the action no longer is an undertaking; they simply indicate that Section 106 review will be completed at an earlier stage than would have been the case had historic properties subject to effect been found.

The following standard process is applicable to most kinds of Federal agency undertakings reviewed under Section 106, and Figure 3 gives a brief summary of this process. A special process for large undertakings will be outlined later.

Figure 3: Standard decisionmaking process for identification

1. Establish area(s) of potential effects.

2. Determine whether the area has been surveyed or otherwise inspected to identify historic properties.

3. Determine whether the area is "large" or "small".

4. Determine whether the available information provides a reliable basis for decisionmaking.

5. Determine whether the area should be subjected to intensive survey, and whether such a survey can be carried out within a reasonable period of time and at reasonable cost.

6. Determine whether an alternative to intensive survey is appropriate.

7. Decide how to proceed with the Section 106 review.

For further discussion of this standard decisionmaking process, see part III.A. of this report.

1. Establish areas(s) of potential effect.

The area of a particular undertaking's potential effect on historic properties is "the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist" [36 CFR § 800.2(c)]. It is within the area(s) of potential effect of a particular undertaking that an agency is responsible for identifying historic properties under Section 106 [36 CFR § 800. 4(a)(1)].

At this stage in decisionmaking, it is appropriate to define the area of potential effect broadly, considering all reasonably foreseeable potential effects the particular type of undertaking could have. Narrowing the area that is subject to specific investigation will occur subsequently.

Definition of an "effect"

An effect is defined for purposes of Section 106 as an alteration in the characteristics of a property "that may qualify the property for inclusion in the National

Register" [36 CFR § 800. 9(a)]. The regulatory definition goes on to note that alteration to features of a property's location, setting, or use may be relevant, depending on the nature of the property's significance. For example, altering the setting of an archeological site important only for the information it contains may not affect the site's significant characteristics (that is, its information), but altering the setting of a historic building whose significance lies in the relationship of its architectural elements to those of other buildings in the vicinity may have a major effect on the building.

While the area of potential effect should be defined broadly, it should nevertheless be linked logically to the potential effects of the undertaking. For example, as noted under principle B ("Identification efforts should be reasonable. . . ") in part II above, if an undertaking will affect only existing buildings and structures, and has no potential for ground disturbance, it is unlikely to have effects on subsurface archeological sites. As a result, such archeological sites might be considered to fall outside the area of potential effect.

When the area of potential effects is defined

It is important to remember that the area of potential effects is defined before the identification effort itself begins, so it may not be known whether any historic properties actually exist there. This is why the regulations call for defining the area of potential effects with reference to changes that may occur in the character or use of historic properties "if any such properties exist." In other words, if an undertaking could result in changes that would affect historic properties that may subsequently be found to exist, then the land within which such changes will occur should be included in the undertaking's area of potential effect. Where alternative locations for an undertaking are considered, each such location--for example, each alternative site for a reservoir, or each alternative alignment for a highway--should be included in the area of potential effect.

2. Determine whether the area has been surveyed or otherwise inspected to identify historic properties.

This determination requires a review of background information on the area [36 CFR § 800. 4(a)(1)(i)], and should be made in consultation with the SHPO [36 CFR § 800. 4(a)(1)(ii)]. Other knowledgeable parties should also be consulted as needed [36 CFR § 800. 4(a)(1)(iii)]. At this stage the concern is only whether the area has been inspected; the quality and nature of the inspection will be considered subsequently, depending on the scale of the undertaking.

If the area has been inspected, the next step is to consider the adequacy of the information resulting from the inspection, so the agency should skip to item III.A.4 ("Determine whether available information provides a reliable basis for decisionmaking"), below.

If the area has not been inspected, or if the results of the inspection do not provide a reliable basis for decisionmaking, then further identification work may be needed. The most efficient approach to further identification work will depend on the size of the area under consideration, so the agency should proceed

to item III.A.3 ("Determine whether the undertaking is 'large' or 'small'"), immediately below.

3. Determine whether the area is "large" or "small".

How the agency defines the terms large and small can vary depending on the region of the country involved, whether the area is rural or urban, the nature of the local environment, and the nature of land use, among other factors. The distinction is an important one, however, because the kinds of identification methods that are appropriate for use in a small area may be distinctly different from those appropriate for use in a large area. It is recommended that agencies consult with SHPOs to establish general agreement about how to distinguish between large and small areas of potential effect.

If the area is small, however the agency has decided to define this term, the agency should proceed to item III.A.4., immediately below, to determine what if anything needs to be done to identify historic properties. If the area is large, the agency should follow the steps outlined in part III.B. of this publication ("Special decisionmaking process for identification in large areas").

4. Determine whether the available information provides a reliable basis for decisionmaking.

Available information may be adequate for decisionmaking even where an area or subarea has not been fully inspected to identify historic properties, depending on the nature and quality of the information, the kinds of properties involved, and the kinds of effects anticipated. For example, where high-quality surveys have been done of portions of a large area, and where extensive background information is available, it may be possible to generate an accurate "predictive model" projecting the distribution and nature of historic properties.

Conversely, available information may be inadequate for decisionmaking even where an area or subarea has been fully inspected. If the inspection was carried out a number of years ago, "[t]he passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible [for the National Register]" [36 CFR § 800.4(c)(1)]. If the inspection was carried out using obsolete methods, by less than fully qualified persons, or addressing only certain kinds of properties (e.g., only archeological sites, or only standing structures), its results may provide an inadequate basis for decisionmaking.

The reliability of previous inspection results also varies with the intensity of the inspection. For example, as discussed in the *Standards and Guidelines for Identification*, an intensive survey should result in a detailed and comprehensive description of historic properties in an area, but a reconnaissance survey almost certainly will not. Similarly, reliability varies with the extent to which the field inspection made effective use of background data. For example, an inspection of the surface of the ground may be an inadequate basis for decisionmaking about

the presence or absence of archeological sites where background data suggests that soil buildup may have buried such sites.

The adequacy of available information should be assessed in consultation with the SHPO [36 CFR § 800.4(a)(1)(ii)].

If the available information does provide a reliable basis for decisionmaking, then the agency is in a position to decide how to proceed with Section 106 review, as discussed under item III.A.7. below.

If the available information is not adequate as a basis for decisionmaking, then field survey should be considered, as discussed under item III.A.5. ("Determine whether the area should be subjected to intensive survey.... ").

5. Determine whether the area should be subjected to intensive survey, and whether such a survey can be carried out within a reasonable period of time and at reasonable cost.

Definition of "intensive survey"

An intensive survey is defined in the *Standards and Guidelines for Identification* as a survey that "describes the distribution of properties in an area, determines the number, location, and condition of properties, determines the types of properties actually present within the area, permits classification of individual properties, and records the physical extent of specific properties." It usually involves on-the-ground inspection of all land and structures in the area, coupled with appropriate background archival research. It often includes interviews with residents and people knowledgeable about the area's historic resources. Sometimes test excavations for archeological resources or detailed inspections of particular structures are conducted. An intensive survey also includes analysis of results, and preparation of appropriate reports. Guidelines for intensive survey can be found in the *Standards and Guidelines for Identification*.

Variables to consider in deciding whether to undertake an intensive survey include the size and complexity of the land area involved, whether the area is urban or rural, the types of properties expected, the ease or difficulty with which such property types can be identified, the extent of Federal control over the lands involved, the ease or difficulty with which access can be obtained, and the nature of projected effects. The kind of survey needed, and variables involved in carrying it out, should be discussed with the SHPO [36 CFR § 800.4(a)(1)(ii)].

If circumstances suggest that an intensive survey is needed, and that the area can be subjected to intensive survey within a reasonable period of time and at reasonable cost, the agency should design and implement such a survey in consultation with the SHPO. The survey should be consistent with the *Standards and Guidelines for Identification*, as suggested by 36 CFR § 800. 4(b). The Department of the Interior's *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act* should also be used as guidance where applicable.

Based on the results of the survey, the agency will be in a position to decide how to proceed with Section 106 review (item III.A.7., below).

If the area cannot be subjected to intensive survey within a reasonable period of time and at reasonable cost, alternative identification methods should be considered, as discussed immediately below.

6. Determine whether an alternative to intensive survey is appropriate.

Alternatives to intensive survey may be appropriate under a number of conditions. For example:

"Reconnaissance survey"

- If it is questionable whether any historic properties exist in an area, a reconnaissance survey may be appropriate. A reconnaissance survey is defined by the *Standards and Guidelines for Identification* as one that provides a basis for "the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved." It may involve a variety of activities, such as a drive-through to look for standing historic structures, interviews with local residents, and archeological inspection of sample tracts, coupled with appropriate background research. In some cases a reconnaissance survey may show that historic properties are so unlikely to occur that there is no need for more intensive survey. In other cases reconnaissance survey may permit further survey work to be focused only on particular subareas or types of properties.

Projections based on surveys

- If access to all lands involved cannot be obtained, it may be possible to make projections based on survey of those lands to which access can be gained.

Use of a "predictive model"

- If the area of potential effects is poorly defined, as may occur when Section 106 review is initiated early in planning an undertaking with numerous alternatives, or when an undertaking's total range of effects are not entirely foreseeable at the time review begins, it may be appropriate to develop a "predictive model." (See part III.B.1., "Use available information to develop a 'predictive model'") Such a model uses background information about the surrounding region as a basis for predicting the kinds of properties that may exist within the area of potential effects. If such a model reliably indicates that the properties subject to effect are likely to represent property types whose treatment will not generate controversy or raise complicated issues, it may be possible to continue Section 106 review on the basis of predictive model data without the need for firm and unequivocal identification of specific historic properties subject to effect.

When considering possible alternatives, the SHPO should be consulted [36 CFR § 800.4(b)].

If an alternative is selected, the agency should carry it out and decide how to proceed with Section 106 review as discussed immediately below. In the unlikely event that intensive survey cannot be done and no alternative can be found, it may not be possible for the agency to comply with Section 106. The agency should immediately contact the Council to discuss further options.

7. Decide how to proceed with Section 106 review.

Generally speaking, review of available information, the results of a survey, or the results of an alternative form of identification will result in one or more of the following determinations:

When historic properties exist that are listed on the National Register

a. Properties exist in the area that are already listed in, or have been determined eligible for, the National Register. If so, the agency should determine effects pursuant to 36 CFR § 800.5 with respect to such properties and also consider whether paragraph b., below, is pertinent.

When historic properties exist that may meet National Register criteria

b. Properties exist in the area that may meet the National Register criteria. If so, the agency should consider the eligibility of such properties pursuant to 36 CFR § 800.4 (c) and also consider whether paragraph c., below, pertains to the area.

When property types are predicted that may meet National Register criteria

c. Property types are known or predicted to occur in the area that may meet the National Register criteria, based on reconnaissance survey data, predictive modeling, or other information. If so, it may be appropriate to execute a Programmatic Agreement pursuant to 36 CFR § 800.13 to address effects on such property types. If the undertaking will affect both known specific historic properties and predicted property types (for example, if it will result both in the demolition of a particular historic building and in altered traffic patterns or patterns of land use that may affect other historic properties that have not yet been identified), "programmatic" stipulations sometimes can be included in a Memorandum of Agreement executed pursuant to 36 CFR § 800.5(e)(4). Finally, the agency should consider whether paragraph d., below, is applicable.

When historic properties may be undetected

d. The possibility exists that properties of historical significance have gone undetected, and thus could be subject to discovery during implementation of the undertaking. If so, the agency should consider developing a plan for the properties' treatment pursuant to 36 CFR § 800.11(a).

B. Special decisionmaking process for identification in large areas

If an area of potential effects has not been inspected in the past, and if it is defined by the agency in consultation with the SHPO as large (see item III.A.3, "Determining whether the area is 'large' or 'small'", above), then the following decisionmaking process is recommended. This process is summarized in Figure 4.

Figure 4: Special decisionmaking process for identification in large areas

1. Use available information to develop a "predictive model" indicating where historic properties exist or are likely to exist.

2. Test the predictive model.

3. Establish additional survey needs and approaches, if any, and consider a Programmatic Agreement.

For further discussion of this special decisionmaking process, see part III.B. of this report.

1. Use available information to develop a "predictive model" indicating where historic properties exist or are likely to exist.

Where a large area is involved, some portions of it may have been inspected to identify historic properties. Even if no organized identification effort has been made, some historic properties may be known, and may even have been nominated to and included in the National Register based on property-specific studies. Other properties may be recorded in State or local inventories, in publications and in manuscripts, while others may be known to experienced people in the area. Other sources of information are historical documents, archeological reports, ethnographic and sociological reports, geographic and geomorphological data, and general anthropological and sociological premises about human behavior, settlement systems, and economic patterns under different environmental conditions. All these sources can be used to predict the presence or absence of historic properties.

For a full discussion of such sources see the *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act* and the *Standards and Guidelines for Identification*. Available information should be reviewed in consultation with the SHPO [36 CFR § 800.4(a)(1)(i-iii)], resulting in a statement of expectations about the kinds of historic properties known or anticipated to exist, and their locations. Such a statement, including documentation about the sources from which it derived and the sources' likely reliability, is usually referred to as a "predictive model" because it predicts how historic properties of various kinds should be distributed within the area.

2. Test the predictive model.

A predictive model should not be regarded as reliable until it has been tested against objective information derived from fieldwork. In some cases, enough field survey work may already have been done within or near the area of potential effects to permit the model to be tested, but in most cases some kind of further survey will be needed. Generally a reconnaissance survey is used to test a predictive model; often the reconnaissance survey involves inspection of a controlled sample of the area, including both locations that are predicted to contain historic properties and locations that are predicted **not** to contain them.

3. Establish additional survey needs and approaches, if any, and consider a Programmatic Agreement.

Once a predictive model is shown through testing to be reasonably reliable, it can be used to guide further survey work and make it more efficient than it would otherwise be. In some cases a reliable predictive model may be an acceptable basis for determining that no further survey work is needed.

Assuming that further work is necessary to identify historic properties subject to effect, the predictive model can be used to concentrate survey efforts on those locations most likely to contain such properties, and to design survey strategies specific to the kinds of properties that can be expected. For example, if the model predicts that buried archeological sites will occur in association with particular landforms, survey work around such landforms can be designed to include test excavation. If the model indicates that buildings representing a particular period may be found in a neighborhood, an architectural historian specializing in the architecture of the period can be added to the survey team. If the model suggests that a portion of the area is used by an American Indian group for traditional cultural purposes, ethnographic studies might be added to the survey program.

Considering an undertaking's effects in determining need for further survey work

The nature of the undertaking's effects on the area should also be considered in designing further survey work. It is possible that the undertaking will have **direct effects only**. In other words, that the undertaking itself will disturb land, and/or demolish or modify buildings, throughout the area of potential effect. On the other hand, an undertaking may have **indirect effects only**. That is, it may not disturb land and/or demolish or modify buildings anywhere within the area of potential effect but may lead to subsequent, reasonably foreseeable, actions that will do so. Most large undertakings, however, can be expected to have mixed effects. That is, they will disturb some land and/or demolish or modify some buildings in some subareas of the area of potential effect ("subareas directly affected"), and make possible subsequent, reasonably foreseeable actions that will do so in other subareas ("subareas indirectly affected").

It may be appropriate to emphasize the survey of subareas directly affected, but areas indirectly affected should not be ignored. Even if only minor survey work is possible in areas indirectly affected, it may still be possible to project the effects of the undertaking on the kinds of historic properties that are predicted to occur there, and develop measures to control such effects through Section 106 review.

For example, if an undertaking will induce urban growth in an area, it may be possible to work with local planning authorities to encourage the conduct of surveys and the protection of historic properties in advance of future construction in locations where the predictive model indicates that historic properties are likely to be found.

Considering a Programmatic Agreement

If the predictive model appears to be reasonably reliable, and if the likely effects of the undertaking can be reasonably well predicted, it may be most efficient for the agency to comply with Section 106 by executing a Programmatic Agreement, following the procedures set forth in 36 CFR § 800.13. Such an agreement can spell out what further survey work will be done (if any) and what steps will be taken to avoid, reduce, or mitigate predicted effects.

If a Programmatic Agreement is not appropriate, the results of a large area identification effort as discussed above can be used as the basis for making informed decisions about how to carry out Section 106 review with respect to individual, localized actions. (See part III.A.7., "Decide how to proceed with Section 106 review.")

The agency should consult the Council and the SHPO when determining which approach to pursue, so as to ensure that Section 106 review is carried out in accordance with a schedule that is consistent with the planning and approval schedule for the undertaking [36 CFR § 800.3(c)] and to ensure that the Council's opportunity to comment on the undertaking is not foreclosed [36 CFR § 800.6(d)].

IV. Reporting and preserving identification results

Proper reporting of identification effort

Whatever kind of identification effort is carried out, it should be properly reported. A report of an identification effort should describe the area studied, the methods employed, any problems encountered, and the results of the study. It should present relevant background data and field observations. The report's preparers and their titles, positions, or other qualifications should be identified. To the extent feasible, the report should be designed to provide information in a form that will be usable by others who may rely upon it in designing future studies, and that will facilitate integration into the historic property inventories maintained by the SHPO and, in some cases, by other Federal agencies, local governments, or Indian tribes.

V. Conclusion

Use of the principles and decisionmaking guides offered above, together with the *Standards and Guidelines for Identification*, *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act*, and other pertinent guidance, should ensure that an agency's program of identification meets the standard of being "a reasonable and good faith effort to identify historic properties that may be affected by the undertaking" [36 CFR § 800.4(b)].

Appendix A: Further guidance

Brace, P. and Klein, J. *Archeological Resources and Urban Development: A Guide to Assess Impact*. Washington, DC: American Society of Landscape Architects, 1984.

Available from the ASLA bookstore as LATIS No. 7 at $15.00 a copy. To order, write LA bookstore, P.O. Box 6525, Ithaca, NY 14851, or call (607) 277-2211 for credit card orders.

Derry, A.; Jandl, H. W.; Shull, Carol D.; and Thorman, J. *Guidelines for Local Surveys: A Basis for Preservation Planning*. Revised by Patricia L. Parker. Washington, DC: National Park Service, U. S. Department of the Interior, 1985.

Available from the American Association for State and Local History (AASLH) as a technical report (TR13) for $5.55 per copy. To order write AASLH/ Order/Billing Dept./ 172 2nd Avenue North/ Suite 102/ Nashville, TN 37201. ($2.00 postage charge; minimum order is $10.00)

Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act. 53 *Federal Register* 4727-46, February 17, 1988.

King, T. F. *The Archeological Survey: Methods and Uses*. Washington, DC: National Park Service, U. S. Department of the Interior, 1978.

Available from U. S. Department of Commerce as NTIS order no: PB284061 at $19.95 for paperback and $6.95 microfiche. To order contact U.S. Department of Commerce/ National Technical Information Service/ 5285 Port Royal Road/ Springfield, VA 22161. ($3.00 postage charge)

Public Participation in Section 106 Review: A Guide for Agency Officials. Washington, DC: Advisory Council on Historic Preservation, 1988.

Single copies available from the Council on request. (In preparation)

Secretary of the Interior's Standards and Guidelines for Identification. 48 CFR 44720, September 1983.

Published by the U. S. Department of the Interior as part of *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines*. 48 CFR 44716-42, September 29, 1983.

Attachment 5

ATTACHMENT #5

WORKING WITH
SECTION 106

PUBLIC PARTICIPATION IN SECTION 106 REVIEW: A Guide for Agency Officials

ISSUED BY
Advisory Council on Historic Preservation

FEBRUARY, 1989

Cover photos:

Council members toured the Big Five Tunnel in Idaho Springs, Colorado, an EPA Superfund cleanup site subject to Section 106 review. (Brit A. Storey, photographer.)

A member of the Kootenai tribe spoke to the Council about the protection of historic properties on tribal lands and Native Americans' participation in the Section 106 review process. (Robert Fink, photographer.)

Interested property owners, State and Federal officials met to discuss plans for a Maryland highway project subject to Section 106 review. (Candace Clifford, photographer.)

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PUBLIC PARTICIPATION IN SECTION 106 REVIEW:
A Guide for Agency Officials

I. Introduction

The National Historic Preservation Act (NHPA) and other Federal authorities, and a growing number of State and local laws, ordinances, and policies, require or encourage the consideration of historic properties in the planning and implementation of land use and development projects.

What Section 106 requires of Federal agencies

Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Council's regulations, "Protection of Historic Properties" [36 CFR Part 800, 1986], guide implementation of Section 106. The resulting system is referred to as the Section 106 review process. Figure 1 gives a brief overview of Section 106 review.

The Section 106 review process provides for active participation by the public. The general public must be notified of agency actions under the regulations, and organizations and individuals concerned with the effects of an undertaking on historic properties (defined in the regulations as "interested persons") are to be involved in the review process in various ways, depending on their particular interests.

The purpose of this publication is to help agencies involve the public effectively, with minimum burden to agency missions. A separate publication will provide advice to the public about participation in the review process.

For general information on the Section 106 review process or on the regulations themselves, the Council's publication, *Section 106, Step-by-Step*, and other literature concerning the process and related historic preservation requirements are available from the Council.

II. Planning for public participation

Systematic planning for public participation in Section 106 review will help agencies ensure that such participation takes place in an orderly and productive manner. Identifying and addressing the public's concerns about historic preservation issues should be a regular part of each agency's overall planning system, whether the activities planned are specific projects or the ongoing management of land or structures.

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow.

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- No effect: the undertaking will not affect historic properties;
- No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;
- Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are

- Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;
- Counterpart regulations developed by an agency and approved by the Council;
- An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

The regulations provide that Section 106 review, including public participation in such review, may be fully coordinated with and satisfied by the procedures carried out by agencies under the authority of the National Environmental Policy Act (NEPA) and other pertinent statutes. The Council encourages agencies to provide for public participation in Section 106 review through existing agency public participation procedures, and also encourages the public to use such procedures fully to raise and resolve historic preservation issues.

Integrating public participation into an agency's administrative processes

To the maximum extent possible, public participation in Section 106 review should be integrated into an agency's normal administrative processes in such a way as to ensure that both Section 106 in general, and public participation in particular, occur in a timely manner well before potentially damaging undertakings are approved. Agencies that are organized into headquarters, regional, and field offices should ensure that their procedures at all levels provide adequately for timely review and public participation. It is essential that agencies ensure that field offices have sufficient time to meet all applicable requirements of Section 106 review, and receive necessary guidance and assistance from regional and headquarters levels.

"Interested persons" and the general public

The Council's regulations distinguish between "interested persons" and other elements of the public. "Interested persons" are defined as "organizations and individuals that are concerned with the effects of an undertaking on historic properties" [36 CFR § 800.2(h)]. Interested persons may be, and in some cases must be, invited to participate in consultation about how to reduce the adverse effects of an undertaking on historic properties. (See Figure 2.) Members of the general public who are not interested persons must be notified of planned actions and decisions, and their comments must be considered, but they need not be invited to be active participants in consultation. It is important that in planning public participation agencies establish mechanisms for identifying and involving interested persons, without diminishing the role of the general public.

Part III, which follows, discusses general principles that should be considered in all kinds of public participation in Section 106 review. Subsequent portions of this paper discuss points to consider in evaluating an existing public participation process, offer recommendations about how to work with the public on a programmatic basis, and outline step-by-step procedures for involving the public in each activity required by the regulations.

Figure 2: Who are "interested persons"?

Definition

The regulations define "interested persons" as "those organizations and individuals that are concerned with the effect of an undertaking on historic properties" [36 CFR § 800.2(h)].

Mandatory participation by interested persons

The following are considered to be interested persons who must be invited to participate in consultation when these persons so request [36 CFR § 800.5(e)(1)]:

- The head of a local government (for example, the mayor of a city, the chief executive of a county government, or his/her designee) when the undertaking may affect historic properties within the local government's jurisdiction;
- The representative of an Indian tribe (federally recognized tribe or Alaska Native Corporation) when an undertaking will affect Indian lands or properties of historic value to the tribe on non-Indian lands. (In the former case the tribe must be invited to concur in any agreement reached by the consulting parties) [36 CFR § 800.1(c),(2)(iii)];
- Applicants for or holders of grants, permits, or licenses that are the subjects of Section 106 review;
- Owners of affected lands, that is, persons who meet the regulations' definition of "interested person" and who hold title to real property within an undertaking's area of potential effect.

Optional participation by interested persons

The following are considered to be interested persons who may be invited to participate in consultation if the agency official, SHPO, and Council (if participating) jointly determine that participation is appropriate [36 CFR § 800.5(e)(2)]:

- Traditional cultural leaders, that is, individuals in a Native American group or other social or ethnic group who are recognized by members of the group as experts on the group's traditional history and cultural practices [36 CFR § 800.1(c)(2)(iii)];
- Other Native Americans, that is, American Indians, Native Hawaiians, and others who are identified by themselves and recognized by others as members of a named, native cultural group that historically has shared linguistic, cultural, social, and other characteristics, but that is not necessarily a federally recognized Indian tribe or Alaska Native Corporation [36 CFR § 800.1(c)(2)(iii)].
- Others who meet the definition of "interested person" [36 CFR § 800.5(e)(1)(iv)].

II. Public participation principles

Agencies should consider the following principles in designing systems for public participation in Section 106 review. See Figure 3 for a summary of public participation principles.

Figure 3: Public participation principles

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

C. Public participation objectives should be approached with flexibility.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

Practical objectives of an agency's public participation effort

An agency's public participation effort should be designed to meet such practical objectives as the following:

- obtaining assistance from members of the public likely to have information about historic properties and the areas that may be affected by undertakings, and informing them of agency undertakings and purposes;
- utilizing the applicable knowledge and expertise of professional and avocational practitioners of such disciplines as history, architectural history, landscape architecture, and archeology;
- involving property owners, local governments, Indian tribes, neighborhood associations, and others whose immediate interests may be affected, whose viewpoints need to be considered in decisionmaking, and who may need to participate in Section 106 review as interested persons;
- considering viewpoints presented by interested persons and other members of the public, both as an aid in information gathering and as a basis for decisionmaking;
- identifying and working toward the resolution of conflicts, if any, between program objectives and preservation objectives, based on full consideration of feasible alternatives.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

Agencies have the affirmative duty to make the public aware of the opportunity to participate in Section 106 review, and to encourage the participation of interested persons. Agencies should be able to expect members of the public who are concerned about historic properties to pursue their opportunity to participate actively and cooperatively in Section 106 review. The process is designed to emphasize good-faith information sharing, consultation and exploration of alternatives, to promote agreement on measures acceptable to all involved. Such a process requires understanding of each party's rights and obligations and respect for diverse points of view.

C. Public participation objectives should be approached with flexibility.

The regulations may be implemented "in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106...and these regulations are met" [36 CFR § 800.3(b)]. With reference to public participation, this means that the agency should involve the public in a flexible manner that reflects the type of undertaking under consideration, the agency's administrative processes, and the nature of known or expected public interests.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

The level of agency effort to ensure public participation in Section 106 review should be appropriate to the scale and type of undertaking involved, to its potential effects, to the kinds of historic properties likely to be affected, and to the kinds of possible public interest present. For example, an undertaking of small scale or in an area not likely to contain historic properties rarely requires the level of public participation that a large scale undertaking or one in an area of known or likely historical significance will warrant. Similarly, an undertaking of a kind that has little potential for adverse effect to historic properties is unlikely to require the same level of public participation as will one that is likely to have major adverse effects.

Based on their mandates and on the volume and variety of their actions, Federal agencies are encouraged to define levels and methods of public participation appropriate to the various classes of undertakings in which they participate. The levels and methods should be consistent with Council guidelines, and should take into account the potential each class of undertaking has for affecting historic properties; they should also provide alternative approaches where particular circumstances warrant them.

For an individual case, at the time an agency initiates Section 106 review, it may not know what kinds of historic properties are subject to effect, what kinds of effects will occur, and what kinds of interests may be affected. A major part of the Section 106 review process involves making informed determinations about precisely these matters. Initial formulation of a means for public participation thus may require some initial identification effort. (See the Council/National Park Service publication, *Identification of Historic Properties: A Decisionmaking Guide for Managers*.) A plan for public participation will also benefit from the advice of the SHPO. Approaches may have to be adjusted as increased understanding is gained about what effects, if any, the undertaking will have.

IV. Evaluating an existing public participation program

The Council and its regulations encourage agencies to "examine" their administrative processes to see that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation," and to consult with the Council to develop special procedures if impediments to such participation are found to exist [36 CFR § 800.1(b)].

Questions to consider in evaluating an agency's public participation process

In reviewing their current processes regarding public participation to ensure that they provide adequately for participation by those interested in historic preservation, in a manner consistent with these Council guidelines, agencies should consider such questions as the following:

- Does the agency make decisions about the scope and timing of public participation in a manner commensurate with the scale of the undertaking and the likelihood that historic properties and public interests in such properties will be affected?
- Does the agency inform the public of potential undertakings in a timely manner, when the widest feasible range of alternatives is open for consideration?
- In such timely public notice, does the agency explicitly request views on historic preservation issues or concerns?
- Does the agency specifically invite the views of groups likely to have interests in potentially affected historic properties?
- Does the agency identify interested persons early in Section 106 review, invite them to participate, and facilitate their participation?
- Does the agency provide mechanisms for addressing and, if possible, resolving the concerns of interested persons?
- Do agency procedures provide for information to be readily available to the public at all stages of the review process, including information on Section 106 review and the means by which the public can participate in review?

- Does the procedure systematically integrate and document the results of public participation, including public views and agency responses, into the Section 106 review process?

If the answers to the above questions are affirmative, the agency's program should fully meet the purposes of public participation in Section 106 review. If not, the program may need to be modified to meet the purposes of Section 106 and Council regulations. The regulations encourage agencies to consult with the Council in making such modifications [36 CFR § 800.1(b)].

V. Methods of public participation through programmatic coordination

Definition of programmatic coordination

Programmatic coordination means establishing and maintaining relationships with elements of the public on an ongoing basis with respect to an agency program, as distinguished from contacting or being contacted by the public only when particular actions are contemplated. Where an agency anticipates numerous undertakings in a general area, programmatic coordination with the public is strongly recommended as a prelude, and sometimes as an alternative, to public participation in the review of individual undertakings. Early outreach to the public to identify potentially interested persons and to establish specific means by which they will be afforded the opportunity to participate in review can greatly facilitate planning of specific undertakings.

When programmatic coordination with the public is appropriate

Programmatic coordination may be especially appropriate for Federal land management agencies, whose undertakings involve the ongoing administration and use of large areas of land. Since interested members of the public, like the land management agencies themselves, generally have long-term interests in the land and resources involved, groups representing various relevant interests are often known to the agencies, and arrangements can be made to ensure that public participation, where needed in specific cases, occurs in an efficient and effective manner. The Council also recommends programmatic coordination where an agency anticipates participating in numerous undertakings in a general area.

Systems for programmatic coordination can be embodied in agency procedures, in memoranda of understanding with interested persons, in Programmatic Agreements executed in accordance with 36 CFR § 800.13, and in informal arrangements designed to meet specific needs. Upon request, the Council will review such systems and advise agencies of their consistency with the purposes of NHPA [Section 202(a)(6)].

Agencies should periodically review and revise their programs for coordination with the public to ensure that these programs remain effective and that they provide for participation by those who are interested in current undertakings.

VI. Methods of public participation on an individual undertaking

The Council recommends that agencies use the following methods when arranging for public participation in the review of individual undertakings. As noted elsewhere, arrangements for public participation should be made early in the agency's consideration of the undertaking, when the widest feasible range of alternatives is open for consideration [36 CFR § 800.3(c)]. Figure 4 gives a summary of these methods.

Figure 4: Methods of public participation on an individual undertaking

A. Determine the extent of public participation needed.

B. Identify potential participants.

C. Seek information from parties with knowledge or concerns.

D. Determine whether "interested persons" exist.

E. Coordinate identification and evaluation with interested persons.

F. Coordinate effect determination with interested persons.

G. Consult with interested persons about adverse effects.

H. Report the conclusion of Section 106 review to interested persons.

A. Determine the extent of public participation needed.

Normally, Section 106 review begins with an assessment of information needs for identification of historic properties, as outlined in 36 CFR § 800.4(a). At this point, the responsible agency should begin to provide for public participation.

When no arrangements for public participation are needed

In some cases, no specific public participation arrangements may be needed. This may be the case if prior programmatic coordination has shown that there are no "local governments, Indian tribes, public and private organizations, [or] other parties likely to have knowledge of or concerns with historic properties in the area [36 CFR § 800.4(a)(1)(iii)]. An example of such a circumstance might be one in which a local government has carried out programmatic coordination with respect to a neighborhood and found no interest in the neighborhood's historic, architectural, archeological, or cultural characteristics. Specific arrangements may be unneeded, too, if the undertaking has very little potential for effect on historic properties, or if it has some potential for effect, but is identical with or very similar to other undertakings that have in the past generated no public interest,

and there is no reason for believing that public interest now exists that did not exist previously.

When particular pre-arranged forms of public participation are needed

In other cases, the scale or nature of the undertaking may be such that only a particular pre-arranged form of public participation is needed. For example, an agency undertaking rehabilitation of houses in a historic district might, through programmatic coordination, find that consultation with a neighborhood organization was the best way to ensure public participation in each of its projects, without the need for wider notification of the public. Similarly, a land managing agency whose undertakings might affect properties of cultural importance to an Indian tribe might establish specific agreements with the tribe and its traditional cultural leaders to ensure that their concerns were identified and addressed, without the need for public participation on a broader scale.

When general public participation is needed

In other cases general public participation in Section 106 review may be needed. The further steps outlined below are recommended for such cases; they should be carried out in the context of the agency's overall public participation process.

B. Identify potential participants.

The regulations direct agencies to seek information from "local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area" [36 CFR § 800.4(a)(1)(iii)] The SHPO should be able to assist the agency in developing an initial list of such parties, each of whom, when contacted, may be able to identify others. In addition to contacting specific groups and individuals, the agency can also notify the public that it has initiated Section 106 review, through articles in local newspapers, media releases, or other appropriate mechanisms, soliciting any information or concerns members of the public may have about potentially affected historic properties.

C. Seek information from parties with knowledge or concerns.

People identified as having particular knowledge or concerns should be asked for any information they may have about affected historic properties and for any concerns about the undertaking's effects [36 CFR § 800.4(a)(1)(iii)].

Ways of seeking information

Local governments, Indian tribes, and historic preservation organizations may have official points of contact through which an agency can ask for such information. Tribes and other Native American groups may also have traditional cultural leaders who are highly knowledgeable about historic properties; seeking information from such leaders may require the assistance of a trained ethnographer. Contacting small public and private organizations and knowledgeable individuals may also require special efforts. Local historical societies and neighborhood organizations, for example, may not be familiar with government operating procedures, and may need help translating their information and concerns into terms that are meaningful to agency planning.

Those contacted should be made aware of Section 106 review and the way the agency's undertaking will be reviewed. They should be asked if they wish to be notified of agency determinations. They should also be advised that the Council oversees Section 106 review and that if they question the way the process is being conducted, they can request Council review of agency findings under 36 CFR § 800.6(e). Their views should be recorded and used in carrying out further steps in the process.

D. Determine whether "interested persons" exist.

As discussed earlier, the regulations give special roles in Section 106 review to "interested persons"; that is, organizations and individuals that are concerned with the effects of an undertaking on historic properties. The agency should apply the definition of "interested persons" to each party identified as having interests in or concerns about historic properties.

E. Coordinate identification and evaluation with interested persons.

The regulations require no specific form of coordination with interested persons during the identification and evaluation phase of Section 106 review [36 CFR §§ 800.4(b) and (c)], but the Council recommends that the agency seek their views, particularly where an interested person has jurisdiction over an area (e.g., a local government or a property owner), or has special knowledge of or interest in a property (e.g., an Indian tribe with an ancestral site, or a historical society with a historic building).

Notification if no historic properties exist

If it is determined that no historic properties exist in the area affected by the undertaking, the regulations encourage, although they do not require, the agency to "notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and [to] make the documentation [that no historic properties exist] available to the public" [36 CFR § 800.4(d)]. Broad dissemination of "no property" findings is encouraged, because public review may reveal historic properties inadvertently missed in the identification effort and help avoid delays later in the undertaking.

F. Coordinate effect determination with interested persons.

If historic properties are identified, the agency must apply the criteria of effect [36 CFR § 800.9(a)] to the properties, "giving consideration to the views, if any, of interested persons" [36 CFR § 800.5(a)]. If the agency determines that the undertaking will have no effect on historic properties, it must notify the SHPO and "interested persons who have made their concerns known," and make the finding "available for public inspection" [36 CFR § 800.5(b)]. If the agency determines that its undertaking will have an effect on historic properties, but that the effect will not be adverse, the agency can obtain the SHPO's concurrence and notify the Council with summary documentation, which must be made available for public

inspection [36 CFR § 800.5(d)(1)(i); also *see Section 106, Step-by-Step*]. Alternatively, the agency can provide the determination to the Council together with the views of "affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit such views" and notify the SHPO [36 CFR § 800.5(d)(1)(ii)]. Figure 5 describes methods by which this documentation can be made available to the public [36 CFR § 800.8(a)(5)].

Figure 5: Making documentation available to the public

When an agency determines that no historic properties are present, that no effect will occur on historic properties, or that an effect will occur but that it will not be adverse, the regulations require that documentation of the determination be made available to the public [36 CFR § 800.4(d); 800.5(b); 800.5(d)(1)]. This documentation should identify the undertaking and include a description of the agency's efforts to identify historic properties. It should describe any such properties involved, and discuss how (if at all) the undertaking will affect them, with reference to the criteria of effect and adverse effect as applicable.

How the documentation is made available to the public can vary with the scale and nature of the undertaking and the extent of agency reporting responsibilities under authorities other than Section 106. Where environmental documents are made available for public review under NEPA, for example, notification of the agency's determination can be included in such documents. For routine or small scale undertakings, it may be sufficient simply to retain documentation in agency files available for inspection by the public, as long as such documentation is also provided to the SHPO and interested persons as required. Documentation made available to the public should include notification to reviewers of their opportunity to request Council review of the agency's finding [36 CFR § 800.6(e)(1)].

In some cases, the historic property involved may be vulnerable to vandalism or other damage if their locations or exact descriptions are revealed. Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) directs Federal agencies, "after consultation with the Secretary [of the Interior] [to] withhold from disclosure to the public, information relating to the location or character of historic resources" under such circumstances. Procedures to follow in such cases are outlined in the Department of the Interior's Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act (53 FR 4727-46; February 17, 1988). Deciding on whether and how to withhold such information requires careful balance between the need to protect the property from damage, and the need to provide the public with sufficient information to participate effectively in the Section 106 process. A commonly used compromise approach involves placing location and detailed descriptive information in confidential appendices to the documentation made available to the public, limiting the availability of such appendices to those with a definite need to know, and providing only general information on the location and nature of historic properties in the material openly available to the public.

In order to consider the views of interested persons, the agency should advise them of the agency's initial conclusions, either orally or in writing, and request their reactions. The agency should explain the rationale for its determination, with appropriate background data.

G. Consult with interested persons about adverse effects.

Mandatory and optional consulting parties

If it is determined that the undertaking will result in adverse effects on historic properties, the regulations provide for interested persons to participate in consultation about ways to avoid or reduce such effects. Some interested persons who so request must be invited to participate, and in some cases to concur in agreements. These include a local government representative within whose jurisdiction the undertaking will occur, an affected applicant for or holder of a grant, permit, or license, and the owner of affected land (see Figure 2). An Indian tribe whose lands are affected by an undertaking must be invited both to participate in consultation and to concur in any agreement. Other interested persons should be allowed to participate in consultation to the extent feasible, but their participation is conditional to the agreement of the responsible Federal agency, the SHPO, and the Council (where the Council participates in consultation).

Inviting interested persons to participate in consultation

The agency should contact any interested persons it has identified, or who have identified themselves, and ask them if they wish to participate in the consultation. Participation can occur at a number of different levels. A participant can be a full consulting party, taking part in meetings that may take place as part of the consultation process, receiving copies of pertinent correspondence, and negotiating actively with the agency, SHPO, and other parties. Consulting parties should usually be invited to concur in any agreements reached, particularly if an agreement specifies actions that these persons will take. At a less intensive level of involvement, participants may take part in consultation only with respect to particular aspects of the undertaking, or to effects of particular kinds or effects on particular properties. The agency may choose not to ask such participants to concur in agreements, or the participants themselves, once they have expressed their own views, may choose not to concur in any agreements.

Those who participate as consulting parties should be provided with the documentation set forth in 36 CFR § 800.8(b) when consultation is initiated. The consultation thereafter can vary based on the nature of the undertaking and its effects, the agency's planning system, the project schedule, and other factors. The fact that a person is a consulting party does not automatically mean that he or she must be included in every telephone conversation or informal meeting. Consulting parties are free to discuss issues among themselves without involving other consulting parties, but must involve other consulting parties in such formal actions as the conduct of public meetings, on-site inspections of areas pertinent to their interests, and the exchange of documents.

All parties should approach consultation as a good-faith effort to resolve conflict between historic preservation interests and the needs of the undertaking, by exploring alternatives to avoid or reduce the adverse effects of the undertaking. Consultation should be carried out with the intent of reaching an agreement acceptable to all consulting parties, and of ensuring that the concerns of all other participants have been identified, thoughtfully considered, and if possible, resolved.

If a consulting party other than the Federal agency, the SHPO, or the Council will not execute or concur in a Memorandum of Agreement (MOA), the agency, SHPO, and Council are not prohibited from executing it. Objections by interested persons to MOAs in preparation, however, should be given full and careful consideration, whether or not such person are consulting parties.

Participation in review by the public in general

The public in general must be given "an adequate opportunity...to receive information and express their views" [36 CFR § 800.5(e)(3)] during the consultation. This can be done in a variety of ways, again depending on the scope of the project and its effects, the agency's planning process, and other factors. Pertinent documentation should be made available for public inspection, and the status of Section 106 consultation should be reported at public hearings or meetings or in pertinent documents that are part of its projects planning or environmental review activities. Meetings with particular groups or individuals, or general public meetings, may be held by the agency, the SHPO, or the Council [36 CFR § 800.5(e)(3)].

H. Report the conclusion of Section 106 review to interested persons.

The Council recommends that interested persons be notified of the conclusion of Section 106 review once the agency has completed the process and, where applicable, obtained the Council's comments.

VII. Documenting public participation

The reason for documenting the agency's public participation efforts is to permit reviewers, including Federal courts in the event of litigation, to review the record and determine whether the agency's efforts have been adequate and reasonable. Generally, the Council has found it easiest to review documentation organized around a chronological summary that outlines the steps taken to provide for public participation and the results of these actions, along with reports, copies of written comments, summaries of meetings, and similar supporting documents attached where pertinent.

Documentation when no historic properties are found or no effect is determined

The regulations do not require that specific documentation of public participation be prepared when no historic properties are found, or when the undertaking is found to have no effect on historic properties. It has been the Council's experience that it is prudent, however, to describe as appropriate public participation efforts and their results, in identification reports, environmental documents, agency files, and elsewhere, as well as in the documentation provided to the SHPO and others pursuant to 36 CFR §§ 800.4(d) or 800.5(b).

Documentation when no adverse effect is determined

Where a "no adverse effect" determination is reported to the Council, specific documentation of public participation efforts is required by 36 CFR § 800.8(a)(5). Where "adverse effect" is determined and further consultation results in an MOA, the agreement when submitted to the Council must be accompanied by "a summary of the views of...any interested persons" [36 CFR §

800.8(c)]. If an agreement is not reached and the Council's comments on the undertaking are sought as a result, the agency must document its "efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons," together with "copies or summaries of any written view submitted" by such persons or others [36 CFR §§ 800.8(d)(8) and 800.8(d)(10)].

Information to include in an agency's record of public participation

Generally speaking, a reviewer of an agency's record of public participation should be able to answer the following questions from the available documents:

- What general efforts did the agency make to ensure that the public was aware that the undertaking was being planned, and that Section 106 review was being carried out?
- What particular elements of the public were contacted for information or to identify concerns? Why were these particular elements of the public chosen over others?
- What groups and individuals, if any, were identified as interested persons? How were interested persons involved in the Section 106 review process?
- What concerns were identified, and what was done about these concerns?

VIII. Approaches to situations involving numerous interested persons

Where a large undertaking is reviewed under Section 106, with widespread potential effects or many alternatives, it is possible that large numbers of people and groups request the opportunity to participate as interested persons. The regulations do not require that all interested persons be invited to be consulting parties, but they do require that persons falling into certain categories be invited. As a result, it is possible for the number of consulting parties to become quite large. For example, a large project with many alternatives could affect hundreds or even thousands of landowners, who must be invited to be consulting parties if they so request [36 CFR § 800.5(e)(1)(iii)].

Developing strategies to provide for large numbers of interested persons

Agency public participation processes should be designed to provide for large numbers of consulting parties, as needed in a balanced and reasonable manner. Agencies should consult with SHPOs and the Council about ways to keep consultation from becoming unwieldy. Some possible strategies include

- distinguishing carefully between formal consulting parties and other interested persons, including in the former category only those required to be accorded consulting party status by the regulations and those whose participation clearly will advance the objectives of Section 106 [36 CFR § 800.1(c)(2)];
- requesting that consulting parties name one or a few representatives to take an active role in consultation on the parties' behalf;

- using public information meetings, workshops, or similar devices to identify major interest groups and their representatives in consultation or other forms of participation;
- breaking up the process of review so that it addresses different alternatives or different kinds of effects at different times, allowing participants to seek resolu tion of particular concerns without having to participate in consultation regarding the entire undertaking; and
- limiting the number of consulting parties asked to concur in agreements to those with key interests in or concerns about the undertaking.

IX. Public participation in Programmatic Agreement development

The regulations permit agencies to develop "Programmatic Agreements" (PAs) with the Council, covering entire agency programs, in lieu of review of individual undertakings [36 CFR § 800.13]. PAs are appropriate where a program results in undertakings that have repetitive effects on historic properties, where effects cannot be fully determined in advance of Federal decisionmaking where non-Federal parties have major decisionmaking responsibilities, and where general land-management planning or routine Federal installation management is involved. Under 36 CFR § 800.13(c), the Council is responsible for arranging for public involvement "appropriate to the subject matter and the scope of the program."

Participation when a Programmatic Agreement is national in scope

Where a PA is national in scope, the Council may publish notice in the *Federal Register* or undertake other general notification that consultation has been initiated. This notification must occur early in the consultation process, but not before an initial draft agreement or at least an outline of issues to be considered is developed, so that respondents to the notice will be able to receive a document on which to comment. The Council also notifies organizations and other parties known or thought to be interested in the agreement's subject matter. Where a PA affects a smaller region or a single State, the Council uses press releases and similar devices, and direct mail contacts with potentially interested persons identified by the agency, the SHPO, and others, in lieu of or to supplement *Federal Register* publication. Public meetings may be held, and interested persons may be invited to consult and to concur in PAs.

Participation when PAs are used with programs of local governments

PAs are sometimes used with respect to programs for the rehabilitation of residential, commercial and industrial areas carried out by local governments using Community Development Block Grants and other funds provided through the Department of Housing and Urban Development (HUD). In such cases, the Council will normally regard the local government's fulfillment of the public participation requirements set forth at 24 CFR §§ 58.55 through 66 as sufficient to ensure public participation in PA development.

Including public participation provisions in PAs

Often, because of the programmatic nature of the activities covered by a PA, it may be difficult to identify some segments of the public who may have concerns about them, or to identify effects with much certainty at the time the PA is

developed. In such cases the PA itself must be designed to include provision for effective public participation in its implementation. The measures of adequacy for such a public participation program are generally the same as those applied to an agency public participation program under Part IV of these guidelines.

X. Conclusion

The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process [36 CFR § 800.1(c)(2)(iv)]. The Council encourages full integration of public participation under Section 106 review and the regulations with other agency programs of planning and public participation. Agencies should ensure that such programs make the public fully aware of historic preservation issues; fully elicit expressions of public interest, knowledge, and concern; and wherever possible resolve conflicts between agency mission requirements and the historic preservation interests held by members of the public. Members of the public are encouraged to view the opportunities afforded them by the regulations as opportunities to work with, rather than against, Federal agencies to ensure that the pursuit of agency programs does not cause undue damage to historic properties, but rather, where possible, results in the enhancement of such properties.

Attachment 6

ATTACHMENT 6:

SRF AGENCY/SHPO COORDINATION

[These do not substitute for 36 CFR 800.4 through 800.6]

(A) Initial project consultation.

(1) Early in a project's planning phase, when project alternatives are identified which have the potential to affect historic properties, if any are present, the SRF Agency should, in conformance with 36 CFR Part 800.4(a)(1)(ii), consult with the SHPO and request their views, comments and advice on: (a) what further actions may be necessary by the SRF Agency to further identify and evaluate historic properties; (b) the significance of all identified historic properties; (c) possible effects on historic properties; and (d) project alternatives and suggested mitigation measures where effects are likely.

(2) If within a thirty day period (as provided under 36 CFR Section 800.1(c)) the SHPO does not respond to the SRF Agency's request(s), the SRF Agency Shall proceed in accordance with 36 CFR 800.4, et. seq..

(B) Routine consultation.

Following initial contact, SRF Agencies should respond to the SHPO's views, comments and advice; shall take further actions as necessary to identify and evaluate historic properties and assess effects on them; and continue to consult and coordinate with the SHPO throughout the historic preservation review process. Where applicable, this review should be integrated with the SERP process (as defined in Attachment 1).

(C) Transmittal of decision documents.

(1) Prior to making a decision on a project, the SRF Agency shall notify the SHPO of measures it intends to incorporate in the project to avoid, minimize, or mitigate effects on historic properties, which must be consistent with any determinations made or agreements entered into by the SRF Agency pursuant to 36 CFR 800.4(d), 800.5(d), 800.5(e) (4), 800.5(e)(5), and/or 800.11(a) as applicable.

(2) The SRF Agency shall provide the SHPO with a copy of its final ER determination for all SRF projects that have involved consultation and coordination pursuant to 36 CR Part 800 et. seq. and the Programmatic Agreement among EPA, the Advisory Council on Historic Preservation, and the National Conference of SHPOs.

(3) In addition, the SRF Agency will routinely notify the SHPO that appropriate documentation regarding SRF 212 projects funded with EPA federal assistance that may affect historic properties is available whenever:

(i) A Draft ER document is finalized; or

(ii) Significant new information relevant to the project's environmental determination is identified, or significant changes to the project plan is made, following the issuance of a Final Determination (ER decision document), but prior to completion of construction,; or

(iii) A mandatory five-year reassessment of a previously issued environmental determination has been conducted on projects and, as requested or otherwise agreed between the SRF Agency and SHPO, provide the SHPO with copies of such documentation.

(4) Appropriate documentation should also be provided the SHPO at similar intervals for 319 and 320 projects funded with EPA federal assistance that may affect historic properties.

Attachment 7

ATTACHMENT 6C – NHPA SECTION 106 PROCESS FLOWCHART

DOH determines if Section 106 review is required

DOH will work with applicant to start the Section 106 process and establish the APE. DOH may also work with SHPD for input on the APE.

DOH ensures letters are sent to NHOs and public notification is issued to OEQC or other publication (if applicable, check OEQC publication deadlines and dates for comment period)

Allow 30 days for NHO response and public comments to notification(s). Address comments, if any.

Applicant submits information to DOH which may be used by DOH when it submits the Section 106 packet to SHPD. Packet includes a letter (with any supporting documents) of final APE, scope of work, proof of consultation with NHOs and public notification, determination of effect, project drawings, 6E determination, and research references

DOH submits Section 106 review initiation packet for 30-day review, pursuant to 36 CFR 800

If there are no effects

SHPO concurs with DOH determination

DOH receives SHPO determination letter and acknowledges and agrees to SHPO conditions, if any

If Potential to cause effects / Finding of no adverse effects

If there is a potential to cause effect, SHPD may determine that more information or further action is needed

DOH will confer with necessary parties (e.g. IBC, NHOs, or other stakeholders) and/or prepare documents requested by SHPD (e.g. BTP, AIS, AMP, etc.)

Reports are submitted to SHPD for review and approval

Adverse effects

Applicant, SHPD, and DOH enter into an MOA to resolve adverse effects. Required to invite Advisory Council on Historic Preservation to sign. In addition, other invited signatories and concurring parties may sign MOA.

If there is a failure to agree, the Advisory Council may provide comments

Section 106 review is terminated

DOH will post a Public Notice of concurrence and acceptance of the EA/FONSI or EIS/ROD, or a Public Notice of a Project Exemption. The Public Notice will be published on the SRF websites

Section 106 review is completed. Proceed with project announcement and bid process.

ACRONYMS

AIS	Archaeological Inventory Survey
AMP	Archaeological Monitoring Plan
APE	Area of Potential Effect
BTP	Burial Treatment Plan
DOH	Department of Health
DWSRF	Drinking Water State Revolving Fund
EIS	Environmental Impact Statement
FEA	Final Environmental Assessment
FONSI	Finding of No Significant Impact
IBC	Island Burial Counsel
NHO	Native Hawaiian Organization
OEQC	Office of Environmental Quality Control
ROD	Record of Determination
SHPD	State Historic Preservation Division
SHPO	State Historic Preservation Officer