

THURSDAY, AUGUST 25, 2016
TIME: 3:15 P.M. TO 4:15 P.M.

PRESENTER: Mr. Scott Glen, Director, OEQC, State of Hawaii

TOPIC: “HRS Chapter 343: Who Makes Determinations and How?”

Notes:

Topic today is the environmental assessment/environmental impact statement review process.

Lots of turnover in OEQC office with vacancies. Mr. Les Segundo is still there (25+ years). Gary Hooser and other three staff members have been there less than one year.

Chapter 343 is the EIS chapter; administrative rules are found in HAR 11-200-XX.

EISPN – preparation notice. Can do without doing an EA first.

FONSI, “finding of no significant impact”, is the same as a “negative declaration”.

EIS acceptance – determination – 11-200-23.

HRS §343-2 definitions – if not an agency (state or county) then are an applicant (including the federal government) for purposes of the statute. An “agency” means an executive branch agency. The Hawaii Supreme Court found that the Department of Hawaii Home Lands is an agency. For the Office of Hawaiian Affairs (OHA), it is unclear if they are part of the executive branch.

Three types of agencies –
 Proposing agency/determining agency
 Approving agency
 Accepting authority

EAs – Question asking – “Do need to do an EIS or not?” If answer is no, the issue FONSI. If yes, then must prepare an EIS.

HAR 11-200-4(a) – Accepting authorities (for agencies). For use of state lands or funds, the Governor is the accepting authority. For County lands or funds, the mayor is the accepting authority.

For applicants, the accepting authority is the approving agency.

Key cases to look at:

1998 – Kepoo vs. Watson (Kepoo I)

2001 – Bremner vs. City and County of Honolulu

2006 – Sierra Club vs. State Office of Planning (Koa Ridge)

Maui is different than other islands. Unclear what policy or rule makes an EIS go the Maui Planning Commission for review. Not aware of any. Is this just the practice??

Trigger + Discretionary approval = EIS

No such thing as a “voluntary EIS” – Hawaii Dairy Farm case. Being sued by Hyatt over whether required and EIS. Complicates the process. The legislature said that certain projects should undergo review. Nothing in the statute that says can voluntarily do if not one of projects intended for review.

“EIS approval” is nonsensical statement or phrase under Chapter 343, although that is often how it is referred to. Means compliance – either exempt, EA or EIS required and did do that.