



The Environmental Notice

October 8, 2021

David Y. Ige, Governor
Mary Alice Evans, Director

The Environmental Notice provides public notice for projects undergoing environmental review in Hawai'i as mandated under Section 343-3, Hawai'i Revised Statutes, the Environmental Impact Statement Law. Along with publishing Environmental Assessments and Environmental Impact Statements for projects in Hawai'i, *The Environmental Notice* also includes other items related to the shoreline, coastal zone, and federal activities.



Federal rules are being enacted to protect Hawaiian spinner dolphins from harassment caused by intentional human disturbance; let's let them be!

Photo credit: [Daniel Parks](#)

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ANNOUNCEMENTS

We remind everyone submitting items for publication in *The Environmental Notice* to either use the [Online Submittal Form](#) or as appropriate, email to our current email address: DBEDT.OPSD.ERP@hawaii.gov. Items sent to the old Department of Health (DOH) domain may not get through in a timely manner.

Also, due to unresolved glitches with our transition, our ability to produce the thumbnail maps typically found with HRS Chapter 343 entries has been temporarily suspended. We look forward to providing these maps as soon as possible. Thank you for your patience during this time.

STATEWIDE MAP OF NEW HRS CHAPTER 343 DOCUMENTS & DETERMINATIONS



HAWAII

Honalo Marshalling Yard Improvements--Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	North Kona
TMK(s)	(3) 7-9-016: 018
Permit(s)	<ul style="list-style-type: none"> • Grading, Grubbing and Driveway Permits (County DPW) • Building Permits and Plan Approval (County DPW and Planning) • Chapter 6e, HRS, Determination from State Historic Preservation Division on Historic Property Effects • Disability and Communication Access Board (DCAB) plan review and approval • Approval of Water Meter And Related Infrastructure (County DWS) • Wastewater System Approval(State DOH, Wastewater Branch)
Proposing/ Determining Agency	State of Hawai'i, Department of Agriculture Janice Fujimoto, (808) 973-9473, Janice.Fujimoto@hawaii.gov 1428 S. King Street, Honolulu, HI 96814
Consultant	GEOMETRICIAN ASSOCIATES, LLC; 10 Hina Street, Hilo, HI 96720 Ron Terry, (808) 987-5239, rterry@hawaii.rr.com
Status	Statutory 30-day public review and comment period starts. Comments are due by November 8, 2021. Please click on title link above to read the document, then send comments to the proposing/determining agency and copy the consultant.

A 1.9-acre State property is leased by the Department of Agriculture to the Kona Producers Cooperative, which subleases it to the Hawai'i 'Ulu Cooperative to process 'ulu and other crops. The goal of the project is to build, expand or improve processing infrastructure including an industrial blast freezer; a temperature-controlled packing room; a detached, dedicated receiving station with commercial scale, access to an electric reach-in forklift, and chill storage located outside the building; improvements to washing and sanitizing processes; and utility upgrades. This will enable a five-fold increase in 'ulu production to 8,000 pounds per day and support thriving commercial 'ulu and sweet potato industries.

The site is fully developed and no impacts to biological, historic, cultural or scenic resources would occur. There will be no permanent traffic impacts. Erosion and sedimentation impacts will be avoided by adherence to BMPs.

Hale Ola O Mohouli Affordable Housing--Final EA (FONSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	South Hilo
TMK(s)	(3) 2-4-001:168
Permit(s)	<ul style="list-style-type: none"> • State Land Use District Boundary Amendment from Agricultural to Urban by Windward Planning Commission and Hawaii County Council • 201H Exemption of County Zone (Windward Planning Commission and Hawai'i County Council) • National Pollutant Discharge Elimination System Permit (State DOH) • Grading, Grubbing and Driveway Permits (County DPW) • Building Permits and Plan Approval (County DPW and Planning)
Approving Agency	County of Hawai'i, Planning Department Tracie-Lee Camero, (808) 961-8166, Tracie-Lee.Camero@hawaiicounty.gov 101 Pauahi Street, Suite 3, Hilo, HI 96720
Applicant	Hawaii Island Community Development Corporation; 100 Pauahi Street, Suite 20, Hilo, HI 96720 Keith Kato, (808) 319-2422, keith.hicdc@gmail.com
Consultant	GEOMETRICIAN ASSOCIATES, LLC; 10 Hina Street, Hilo, HI 96720 Ron Terry, (808) 987-5239, rterry@hawaii.rr.com
Status	Finding of No Significant Impact (FONSI) determination

HICDC, a non-profit dedicated to developing affordable housing, proposes to construct up to 90 units of affordable housing on a 9.091-acre government property in Hilo. Land use designations will be changed to State Land Use Urban and County zoning of multi-family residential. The site's vegetation is lightly disturbed native 'ōhi'a forest on the 1881 lava flow. Surveys have determined that no historic properties, cultural sites or uses, or threatened or endangered plant species are present on the property. Mitigation includes landscaping, construction of a fence adjacent to residential properties, timing of vegetation clearing to avoid impacts to listed vertebrate species, and NPDES and grading permits with BMPs. Traffic impacts will be minor and within the capacity of the existing intersection.

HAWAII (CONTINUED)

Waiakea-Palai Streams Flood Control Project--Final EA (FONSI)

Grandfathered under old rules

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	South Hilo
TMK(s)	(3) 2-4-002:001; 2-4-035:003 & 032; 2-4-036:001 & 999; 2-4-065:035 & 036; 2-4-076:044
Permit(s)	Numerous (see document)
Proposing/ Determining Agency	County of Hawai'i, Department of Public Works Bryce Harada, (808) 961-8327, dpweng@hawaiicounty.gov 101 Pauahi St., Suite 7, Hilo, HI 96720
Consultant	Army Corp of Engineers, Honolulu District; Bldg 230, Fort Shafter, HI 96858 Jeff Herzog, (808) 202-7204, Jeffrey.A.Herzog@usace.army.mil
Status	Finding of No Significant Impact (FONSI) determination

This integrated feasibility report and environmental assessment presents the results of a U.S. Army Corps of Engineers (Corps) study undertaken to identify and evaluate flood risk management (FRM) problems and opportunities on the Waiakea and Palai Streams near Hilo, Hawaii. The Corps is the lead federal agency conducting this study. The non-Federal sponsor is the County of Hawaii, Department of Public Works (COH-DPW). The purpose of the study is to address the risks to life, structures, property, and public infrastructure from periodic flooding in certain locations within the vicinity of Waiakea and Palai Streams.

The proposed alternatives including Kupulau Ditch Levee/Floodwall with Detention and Hilo Golf Course Detention is presented as the recommended plan. The total project first cost is estimated to be \$10.8 million dollars at a cost share between the Corps and COH-DPW with a benefit cost ratio = 3.5.

MAUI

Kuikahi Affordable Housing--Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	Wailuku
TMK(s)	(2) 3-5-002:003 (por.)
Permit(s)	State District Boundary Amendment and Maui County Code Chapter 2.97 Affordable Housing Application (Maui County Council); Chapter 11-46, Community Noise Control; Chapter 11-60.1-33, Fugitive Dust; NPDES (County of Maui); Construction permits (building, grading); Work on County Roadway approval
Approving Agency	County of Maui, Department of Housing and Human Concerns Lori Tshuhako, (808) 270-7351, director.hhc@mauicounty.gov 2200 Main Street, Suite 546, Wailuku, HI 96793
Applicant	Kuikahi Properties, LLC; 191 Waihe'e Valley Road, Wailuku, HI 96793 John Varel, (808) 357-0702, doyle@alaula.org
Consultant	Munekiyo Hiraga; 305 High Street, Suite 104, Wailuku, HI 96793 Charlene Shibuya, (808) 244-2015, charlene@munekiyohiraga.com
Status	Statutory 30-day public review and comment period starts. Comments are due by November 8, 2021. Please send comments to the approving agency at planning@munekiyohiraga.com and copy the applicant.

Kuikahi Properties, LLC proposes a new residential community to include a variety of residence types such as multi-family, duplex, live-work, tiny home, and single family units on an approximately 14.9-acre portion of land in Wailuku, Maui. The proposed development also involves a minor residential business component through the live-work units, which are envisioned to be for neighborhood services or office types of businesses. The proposed project will be comprised of 204 residential units anticipated for sale at affordable levels per the Area Median Index. Related improvements to be developed with the project include onsite parking for residents and visitors, internal roadways and sidewalks, bike paths, landscaping, a pavilion, playground, spot parks, drainage improvements, underground utility connections, and 2 access connections to Ku'ikahi Drive. A roundabout at the intersection of Ku'ikahi Drive and Kehalani Mauka Parkway is proposed.

O‘AHU

Barbers Point Solar Project--Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds (4) Propose any use within any historic site...
District(s)	‘Ewa
TMK(s)	(1) 9-1-013:038 and :040; 9-1-016:027
Permit(s)	Hawai‘i Community Development Authority (HCDA) Conditional Use Permit (CUP), Development Permit and Variance; HRS Chapter 6E Compliance (Historic Preservation Review); Hawai‘i DOT Use and Occupancy Permit and Driveway Permits, NPDES Permit; Hawai‘i DOH Community Noise Permit; City and County of Honolulu Building Permit and Grading & Grubbing Permit; Federal Aviation Administration Notice of Proposed Construction or Alteration
Approving Agency	State of Hawai‘i, Department of Hawaiian Home Lands Andrew Choy, (808) 620-9500, dhhl.planning@hawaii.gov P.O. Box 1879, Honolulu, HI 96805
Applicant	Barbers Point Solar, LLC; 3636 Nobel Drive, Suite 360, San Diego, CA 92122 Julia Mancinelli, (604) 345-4009, barberspointsolar@innergex.com
Consultant	Tetra Tech, Inc.; 737 Bishop Street, Suite 2340, Honolulu, HI 96813-3201 Leslie McClain, (503) 222-4536, leslie.mcclain@tetrattech.com
Status	Statutory 30-day public review and comment period starts. Comments are due by November 8, 2021. Please send comments to the approving agency and copy the applicant and the consultant.

The proposal involves the construction and operation of a 15 megawatt (MW) solar photovoltaic system coupled with a 60 MW-hour battery energy storage system as well as ancillary support infrastructure in east Kalaeloa, O‘ahu. The solar arrays will be located on DHHL lands and the project would interconnect with Hawaiian Electric’s island-wide grid via an approximately 1.2-mile overhead and underground generation-tie line that would extend from the Project’s substation, north along Coral Sea Road within HDOT Right-of-Way, to a termination point on an existing transmission line located on TMK 9-1-016:027. Power generated from the Project would be sold to Hawaiian Electric under a 25-year power purchase agreement. The Project will be decommissioned at the end of its useful life and the Project area would be returned to substantially pre-development condition.

KAUA‘I

Wai‘oli Valley Taro Hui Long-Term Water Lease for Traditional Lo‘i Kalo Cultivation--Final EA (FONSI)

HRS §343-5(a) Trigger	(2) Propose any use within any land classified as a conservation district
District(s)	Hanalei
TMK(s)	various (see document)
Permit(s)	Right of Entry, Non-Exclusive Easement, Request for Water Lease, Watershed Management Plan, DHHL Statement re: Reservation, Interim Instream Flow Standard
Approving Agency	State of Hawai‘i, Department of Land and Natural Resources Ian Hirokawa, (808) 587-0400, ian.c.hirokawa@hawaii.gov
Applicant	Wai‘oli Valley Taro Hui, Inc.; P.O. Box 1289, Hanalei, HI 96714 A. Uilani Tanigawa Lum, (808) 281-9802, anelatan@hawaii.edu
Consultant	Tridason LLC; P.O. Box 1361, Honolulu, HI 96807 Tricia Dang, (808) 542-9251, info@tridason.com
Status	Finding of No Significant Impact (FONSI) determination

Wai‘oli Valley Taro Hui, Inc. (“Hui”) will be requesting a 65-year water lease from the Board of Land and Natural Resources (“BLNR”) for the ongoing traditional and customary Native Hawaiian use of water from Wai‘oli Stream for lo‘i kalo cultivation, a cultural practice that has fed Wai‘oli Valley and its neighboring ahupua‘a and people for centuries.

Based on historic and existing use of this traditional irrigation system, and consistent with the Hawai‘i Commission on Water Resource Management’s 2021 numeric Interim Instream Flow Standard (“IIFS”) for Wai‘oli Stream of 4.0 million gallons per day (“mgd”) the Hui is requesting all water in excess of the amended IIFS, up to 13.5 mgd, as needed to support lo‘i kalo cultivation on private land outside the Conservation district.

CHAPTER 25, REVISED ORDINANCES OF HONOLULU

Use of the Special Management Area (SMA) is not a trigger under Chapter 343, but developments in O'ahu's SMA are required to go through an environmental review process that mirrors the procedural requirements of [HRS Chapter 343](#), pursuant to [Revised Ordinances of Honolulu, Chapter 25](#). Developments being reviewed under Chapter 25 but not Chapter 343 appear here.

Ho Single-Family Residence Redevelopment--Draft EA (AFNSI)

District(s)	Waialua
TMK(s)	(1) 6-8-005:002
Permit(s)	ROH Chapter 25, Special Management Area Use Permit and Ch 21 Conditional Use Permit - Major; Grading, Drubbing, Trenching and Stockpiling Permits; and Building Permits
Approving Agency	City and County of Honolulu, Department of Planning and Permitting Malyne Simeon, (808) 768-8023, msimeon@honolulu.gov 650 South King Street, Honolulu, HI 96813
Applicant	Michelle K. Ho, Trustee; 68-415 Crozier Drive, Waialua, HI 96791 c/o Brittany Wheatman, (808) 521-5631, bwheatman@pbrhawaii.com
Consultant	PBR Hawaii; 1001 Bishop Street, Suite 650, Honolulu, HI 96813 Brittany Wheatman, (808) 521-5631, bwheatman@pbrhawaii.com
Status	30-day public review and comment period starts. Comments are due by November 8, 2021. Please send comments to the approving agency and copy the consultant.

This Environmental Assessment is being prepared in accordance with Chapter 205A, Hawai'i Revised Statutes (HRS), in support of a Special Management Area (SMA) Use Permit application. The Project consists of replacing a 30-year old residence that has been subject to damage from wind and salt, with a new 5,195-square-foot two-story, single-family dwelling, and a detached accessory structure located entirely within the SMA. The proposed dwelling unit will include up to four bedrooms, lanais, study room, and a two-car garage, with three additional off-street parking; be built to more modern building codes; and incorporate "green" features.

Wheatley Single-Family Residence--Draft EA (AFNSI)

District(s)	Honolulu
TMK(s)	(1) 3-9-013: 032
Permit(s)	Special Management Area Use Permit, building, grading, grubbing, stockpiling, trenching, NPDES and UIC permits
Approving Agency	City and County of Honolulu, Department of Planning and Permitting Steve Tagawa, (808) 768-8024, stagawa@honolulu.gov 650 South King Street, Honolulu, HI 96813
Applicant	Mr. Robert M. Wheatley and Ms. Sue J. Lee c/o: Russell Okoji, (808) 425-0968, russellokoji@enviroriskhawaii.com
Consultant	Environmental Risk Analysis, LLC; 905 A Makahiki Way, Honolulu, HI 96826 Russell Okoji, (808) 425-0968, russellokoji@enviroriskhawaii.com
Status	30-day public review and comment period starts. Comments are due by November 8, 2021. Please send comments to the approving agency and copy the consultant.

The demolition of an existing single-family residence located at 4 Lumahai Street in East Honolulu and the construction of a new 4,725-square-foot, two-story modular residence and a 569-square-foot garage on a 21,639-square-foot cliff-side shoreline parcel in the SMA. The irregularly shaped rocky parcel slopes steeply downward from the street, with an elevation that ranges from 141 to 30 feet above mean sea level.

The site is adjacent to the 10-foot wide public shoreline access to the "Spitting Caves" which are located immediately below the site. The lower 3,500 square-foot portion of the parcel is designated as a public access easement and the lowest 1,466-square-foot portion of the parcel has been surveyed as lost to erosion.

The construction of the new dwelling requires approval of a SMA Use Permit from the Honolulu City Council.

PREVIOUSLY PUBLISHED DOCUMENTS OPEN FOR COMMENT

Status: Public review and comment period for these projects began previously. Please click on the links below to read a document, then send comments to the relevant agency and copy any relevant applicant and/or consultant.

COMMENTS DUE OCTOBER 8, 2021

HAWAI'I

[Caltech Submillimeter Observatory Decommissioning--Draft EA \(AFNSI\)](#), [Appendix Vol 1](#), and [Appendix Vol 2 Hōkū Ke'a Observatory Decommissioning--Draft EA \(AFNSI\)](#)

LANA'I

[Kō'ele Project District Amendment--Draft EA \(AFNSI\)](#)

COMMENTS DUE OCTOBER 25, 2021

MAUI

[Hale Mahaolu Ke Kahua Affordable Housing Community--Draft EA \(AFNSI\)](#)

O'AHU

[ENV Support Facilities Access Road, Utility Improvements and 'Ewa Refuse Convenience Center Relocation--Draft EA \(AFNSI\)](#)

EXEMPTION DECLARATION

Hāmākua-Kohala Health (HKH) is voluntarily publishing the following Exemption Declaration they have made, pursuant to [HAR § 11-200.1-16](#):

[Hāmākua Health Center Building Demolition Project](#)

The Project involves demolishing the existing infirmary building so that a new health care facility building can be constructed to replace it. The HKH Project proposes to:

1. Demolish old infirmary building due to mold, termites, lead, asbestos, and flooding
2. Clear and grub the site
3. Relocate and reconstruct existing utilities affected by the demolition.

LISTS OF EXEMPTION NOTICES

Pursuant to [HAR § 11-200.1-17](#), State and county agencies that have determined specific actions to be exempt from the requirement to prepare an EA are required to submit a listing of such exemptions made during the previous month. Following are Lists of Exemption Notices submitted by various agencies for September 2021; contact the identified agency contact on each list for additional information about any specific exemption:

State of Hawai'i

[Hawai'i Public Housing Authority](#)
[Department of Land and Natural Resources](#)
[Department of Transportation](#)

County of Maui

[Department of Planning](#)

City and County of Honolulu

[Department of Planning and Permitting](#)

County of Hawai'i

[Department of Environmental Management](#)

PRIOR DETERMINATION

The Honolulu Department of Planning and Permitting [has determined](#) that additional environmental review is not required for the proposed Royal Kunia Phase II mixed use development, which will include 1,850 dwelling units, public park space, a public school, industrial uses, an agricultural park, and a solar farm. On 9/23/89, the former Department of General Planning accepted an environmental impact statement for the development. On 5/28/96, the former Planning Department issued a finding of no significant impact for an environmental assessment with modified components. The development plan amendment, which originally triggered environmental review, has already been processed. This determination explains how the project has changed over time and why additional environmental review is not required pursuant to HAR Section 11-200.1-11.

SHORELINE NOTICES

APPLICATIONS FOR SHORELINE CERTIFICATION

The shoreline certification applications below are available for review and comment at the Department of Land and Natural Resources offices on Kaua'i, Hawai'i, Maui, and Honolulu, 1151 Punchbowl Street, Room 220 ([HRS § 205A-42](#) and [HAR § 13-222-12](#)). **Maps and photos of each application file can be viewed [here](#). All comments shall be submitted in writing to the State Land Surveyor, 1151 Punchbowl Street, Room 210, Honolulu, HI 96813 and postmarked no later than 15 calendar days from the date of this public notice of the application.** For more information, call Ian Hirokawa at (808) 587-0420.

File No.	Location	TMK	Applicant	Owner
MA-764	475 Front Street, Maui 96761	(2) 4-6-002: 007	Leaps & Boundaries, Inc.	Lahaina Venturers, Lori Fisher president
MA-765	Makena Road, Maui 96753	(2) 2-1-006: 092, 093, 094	Action Survey LLC	Yant Enterprises LLC
HA-610	77-220 Kealohi Kai Place	(3) 7-7-024: 001	Wes Thomas Associates	Robert C. Hollander and Susan Ito Hollander
KA-460	Hanamā'ulu, Līhu'e	(4) 3-5-001: 102, 5, 8, 9, 92, 109, 111, 128, 158, 159, 160	Esaki Surveying and Mapping, Inc.	County of Kaua'i, State of Hawai'i

PROPOSED SHORELINE CERTIFICATIONS AND REJECTIONS

The shoreline notices below have been proposed for certification or rejection by the Department of Land and Natural Resources ([HRS § 205A-42](#) and [HAR § 13-222-26](#)). Any person or agency who wants to appeal shall file a notice of appeal in writing with DLNR no later than 20 calendar days from the date of this public notice. Send the appeal to the Board of Land and Natural Resources, 1151 Punchbowl Street, Room 220, Honolulu, Hawai'i 96813.

File No.	Status	Location	TMK	Applicant	Owner
MA-751	Proposed	347 Front Street, Maui	(2) 4-6-003: 016	Action Survey LLC	Nanae Mori Lassen
MA-762	Proposed	49 Hale Malia Place, Maui 96761	(2) 4-3-003: 092	Lester Domingo	Jim and Dana Bozich
HA-605	Proposed	69-1778 Puakō Beach Drive, Hawai'i	(3) 6-9-004: 002	Wes Thomas Associates	Klekala LLC
HA-606	Proposed	69-1544 and 69-1548 Puakō Beach Drive, Hawai'i	(3) 6-9-002: 035 & 036	Wes Thomas Associates	Jake-Puako Holdings, LLC

COASTAL ZONE MANAGEMENT NOTICES

SPECIAL MANAGEMENT AREA (SMA) MINOR PERMITS

The SMA Minor permits below have been approved ([HRS § 205A-30](#)). For more information, contact the relevant county/state planning agency. Honolulu (768-8014); Hawai'i (East 961-8288, West 323-4770); Kaua'i (241-4050); Maui (270-7735); Kaka'ako or Kalaeloa Community Development District (587-2841).

Location (TMK)	Description (File No.)	Applicant/Agent
Kaua'i: Kōloa (2-6-016:021)	Swimming Pool, Lava Stone Pavers, Fence, Moss Rock Pillars. (SMA(M)-2022-3)	Randy and Patricia Finlay
Maui: Wailea (2-1-008: 064)	Cleaning Trimming Cleaning of Foliage (SM2 20180044)	Sharon Wright – MWA, Inc.
Maui: Kīhei (3-9-006: 004)	Williams Renovations (SM2 20200087)	CDF Engineering LLC
Maui: Kīhei (3-9-006: 023)	New Sewer Lateral & Property Manhole (SM2 20210075)	Brandon Murr – CDF Engineering LLC
Maui: Kīhei (3-9-029: 049)	Retailing Wall (SM2 20210076)	Lawrence Carnicelli
Maui: Lahaina (4-3-003: 015)	Kahana Sunset Seawall Repair (SM2 20210077)	Kahana Sunset AOAO
O'ahu: Kailua (4-3-005: 060)	New Pool, Rock Wall, and Driveway (2021/SMA-38)	Ann Dewey/DDC Drafting Service LTD
O'ahu: Maunaloa (3-9-013: 029)	Replacement Swimming Pool, Spa, Deck, and New Fire Pit and Fencing (2021/SMA-41)	Eric and Veronica Moye/Umur A. Turkalp
O'ahu: Niu Beach (3-7-001: 032)	Meek Residence Alteration Renovation (2021/SMA-42)	Martin Meeks/Umur A. Turkalp

STATE AND COUNTY NOTICES

[Notice of Decision to Grant Request for Extension of Time to Consider Final Environmental Impact Statement](#)

The Board of Land and Natural Resources (Board) has granted the Pet Industry Joint Advisory Council's (PIJAC's) request for an extension of time for consideration of PIJAC's Final Environmental Impact Statement (FEIS) for the Issuance of Commercial Aquarium Permits and Commercial Marine Licenses for the island of O'ahu. The Board now has until October 10, 2021 to consider and take action on accepting the FEIS.

FEDERAL NOTICES

As a courtesy, listed below are some relevant entries from the Federal Register published since the last issue of *The Environmental Notice*. For more information, click on the title link, also available at www.federalregister.gov.

[Rule: Swim With and Approach Regulation for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act \(published by the National Oceanic and Atmospheric Administration on 09/28/2021\)](#)

We, NMFS, establish a regulation under the Marine Mammal Protection Act (MMPA) to prohibit swimming with and approaching a Hawaiian spinner dolphin within 50 yards (45.7 meters (m)) (for persons, vessels, and objects), including approach by interception. These regulatory measures are intended to prevent take of Hawaiian spinner dolphins from occurring in marine areas where viewing pressures are most prevalent; the swim-with and approach prohibitions apply in waters within 2 nautical miles (nmi; 3.7 kilometers (km)) of the Hawaiian Islands and in designated waters bounded by the islands of Lānaʻi, Maui, and Kahoʻolawe. Although unauthorized take of marine mammals, including harassment of spinner dolphins, already is and continues to be prohibited under the MMPA throughout their range, the purpose of this regulation is to identify and prohibit specific human activities that result in take (including harassment) of Hawaiian spinner dolphins, and thus reduce disturbance and disruption of important Hawaiian spinner dolphin behaviors in areas where human-dolphin interactions are most likely to occur. This regulation is expected to reduce take of Hawaiian spinner dolphins and the impact of human viewing and interaction on these animals in the main Hawaiian Islands. **This final rule is effective October 28, 2021.**

[Proposed Rule: Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act \(published by the National Oceanic and Atmospheric Administration on 09/28/2021\)](#)

We, NMFS, propose a regulation under the Marine Mammal Protection Act (MMPA) to establish mandatory time-area closures of Hawaiian spinner dolphins' essential daytime habitats at five selected sites in the Main Hawaiian Islands. These regulatory measures are intended to reduce take of Hawaiian spinner dolphins from occurring in inshore marine areas at essential daytime habitats, and where high levels of disturbance from human activities are most prevalent. During designated times, unless subject to an exception as described in this rule, these regulatory measures would prohibit any person or vessel, on or below the surface, to enter, cause to enter, solicit to enter, or remain within any of the five time-area closures, for the purpose of preventing take of Hawaiian spinner dolphins in areas identified as important essential daytime habitats for spinner dolphins that have high levels of human disturbance. The proposed mandatory time-area closures would occur from 6 a.m. to 3 p.m. daily in areas of Kealakekua Bay, Hōnaunau Bay, Kauhakō Bay (Hoʻokena), and Makako Bay on Hawaiʻi Island, and La Perouse Bay on Maui. **Comments on this proposal must be received by December 27, 2021.**

[Notice: Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program \(published by the Environmental Protection Agency on 09/28/2021\)](#)

The Environmental Protection Agency issued a memorandum rescinding the guidance document entitled "Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program," which was signed on January 14, 2021. The memorandum was issued on September 15, 2021.

[Proposed Rule: Endangered and Threatened Wildlife and Plants; Removal of 23 Extinct Species From the Lists of Endangered and Threatened Wildlife and Plants \(published by the Fish and Wildlife Service on 09/30/2021\)](#)

The U.S. Fish and Wildlife Service proposes to remove 23 species from the Federal Lists of Endangered and Threatened Wildlife and Plants due to extinction. Proposed species from Hawaii include Bridled white-eye, Kauai akialoa, Kauai nukupuu, Kauai ʻoʻo (honeyeater), large Kauai thrush (kama), little Mariana fruit bat, Maui akepa, Maui nukupuu, Molokai creeper (kakawahie), *Phyllostegia glabra* var. *lanaiensis* (no common name), and poʻouli (honeycreeper) This proposal is based on a review of the best available scientific and commercial information, which indicates that these species are no longer extant and, as such, no longer meet the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended. We are seeking information and comments from the public regarding this proposed rule. **Comments must be received or postmarked on or before November 29, 2021.**

GLOSSARY OF TERMS AND DEFINITIONS

Agency Actions

Projects or programs proposed by any department, office, board, or commission of the state or county government which is part of the executive branch of that government per [HRS 343-2](#).

Applicant Actions

Projects or programs proposed by any person who, pursuant to statute, ordinance, or rule, requests approval for a proposed action per [HRS 343-2](#).

Draft Environmental Assessment

When an Agency or Applicant proposes an action that [triggers](#) HRS 343, an Environmental Assessment shall be prepared at the earliest practicable time to determine whether the action's environmental impact will be significant, and thus whether an environmental impact statement shall be required per [HRS 343-5\(b\)](#), for Agency actions and [HRS 343-5\(e\)](#), for Applicant actions. For actions for which the proposing or approving agency anticipates a Finding of No Significant Impact (AFNSI), a Draft EA (DEA) shall be made available for public review and comment for 30 days and public notice is published in this periodic bulletin.

Final Environmental Assessment and Finding of No Significant Impact

The action's proponent shall respond in writing to comments on a DEA received during the 30-day review period and prepare a Final EA (FEA) that includes those responses to determine whether an environmental impact statement shall be required. If there are no significant impacts, then the Agency will issue a Finding of No Significant Impact (FONSI). An Environmental Impact Statement (EIS) will not be required and the project has cleared HRS 343 requirements. The public has 30 days from the notice of a FONSI in this bulletin to ask the Environmental Court to require the preparation of an EIS.

Final Environmental Assessment and Environmental Impact Statement Preparation Notice

An EIS shall be required if the Agency finds that the proposed action may have a significant effect on the environment. The Agency shall file notice of such determination with OEQC, called an EIS Preparation Notice (EISPAN) along with the supporting Final EA. After the notice of the FEA-EISPAN is published in this bulletin, the public has 30 days to request to become a consulted party and to make written comments. The public (including the Applicant) has 60 days from the notice of the EISPAN in this bulletin to ask a court to not require the preparation of an EIS.

Act 172-2012, Direct-to-EIS, Environmental Impact Statement Preparation Notice (with no EA)

Act 172 in 2012 amended HRS 343 by providing for an agency to bypass the preparation of an environmental assessment for various actions that in the experience of the agency would clearly require the preparation of an EIS. The agency must submit its determination that an EIS is required for an action (Act 172-2012, EISPAN) with a completed OEQC publication form detailing the specifics of the action. This starts a 30-day scoping period in which the agency or applicant must hold a public scoping meeting for the preparation of the Draft EIS. Written comments and responses on the EISPAN must be incorporated into the subsequent Draft EIS and oral comments from the public scoping meeting must be recorded and submitted to the OEQC with the Draft EIS.

Act 312-2012, Secondary Actions in the Highway or Public Right Of Way

Act 312-2012, amended HRS 343, by adding a new section (HRS 343-5.5., entitled "Exception to applicability of chapter"). HEPA allows for a statutory exception for "secondary actions" (those that involve infrastructure in the highway or public right-of-way) provided that the permit or approval of the related "primary action" (those outside of the highway or public-right-of-way and on private property) is not subject to discretionary consent and further provided that the applicant for the primary action submits documentation from the appropriate agency confirming that no further discretionary approvals are required. An aid to understanding this is to visualize residential driveway improvements in the public right-of-way, versus, retail outlet driveway improvements in the public right-of-way.

Draft Environmental Impact Statement

After receiving the comments on the EISPAN, the Agency or Applicant must prepare a Draft Environmental Impact Statement (DEIS). The content requirements of the DEIS shall contain an explanation of the environmental consequences of the proposed action including the direct, indirect and cumulative impacts and their mitigation measures. The public has 45 days from the first publication date in this bulletin to comment on a DEIS. The DEIS must respond to comments received during the EISPAN comment period in a point-by-point manner.

Final Environmental Impact Statement

After considering all public comments filed during the DEIS stage, the Agency or Applicant must prepare a Final EIS (FEIS). The FEIS must respond in a point-by-point manner to all comments from the draft and must be included in the FEIS. For Applicant projects, the Approving Agency is the Accepting Authority and must make a determination within 30 days or the FEIS is deemed accepted as a matter of law. For an Agency project, the Governor or the Mayor (or their designated representative) is the Accepting Authority, and unlike applicant actions, there is no time limit on the accepting authority reviewing the FEIS. Only after the FEIS is accepted may the project be implemented.

Acceptability

The Accepting Authority must be satisfied that the FEIS meets three criteria (process, content, response to comments) to accept it. If the FEIS is accepted, notice is published in this bulletin. The public has 60 days from publication to challenge the acceptance of a FEIS. For Applicant actions, non-acceptance by the Approving Agency is cause for the Applicant to administratively appeal to the Environmental Council. For Agency actions, there is no such administrative appeal. In both instances, the Applicant or the proposing Agency can prepare a revised DEIS after a non-acceptance determination.



Maui sunset

Photo by [Thomas Hawk](#)

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires federal projects to prepare a Federal EA or EIS. In many ways it is similar to Hawai'i's law. Some projects require both a State and Federal EIS and the public comment procedure should be coordinated. Upon request by a federal agency, OEQC publishes NEPA notices in this bulletin to help keep the public informed of important federal actions.

Conservation District

Proposed uses of land in the State Conservation District require a Conservation District Use Application (CDUA). These applications are reviewed and approved by the Board of Land and Natural Resources. Members of the public may intervene in the permit process. This bulletin will include EAs & EISs for actions proposed within the Conservation District.

Special Management Area and Shoreline Setback Area

The Special Management Area (SMA) is along the coastline of all islands and development in this area is generally regulated by [HRS 205A](#), and county ordinance. A portion of the SMA that is addressed by HRS 343 is the [Shoreline Area](#), which includes land between the State-certified shoreline and the county-determined shoreline setback line. This bulletin will include EAs & EISs for actions proposed within the Shoreline Setback Area.

Shoreline Certifications

State law requires that Hawai'i shorelines be surveyed and certified when necessary to clearly establish the shoreline setback from the certified shoreline. The public may participate in the process to help assure accurate regulatory boundaries. Private land owners often petition to have their shoreline certified by the State surveyor prior to construction. This bulletin publishes notice from the Department of Land and Natural Resources of shoreline certification applicants and final certifications or rejections.

Environmental Council

The [Environmental Council](#) is a 15-member citizen board appointed by the Governor. They serve as a liaison between the Director of OEQC and the general public concerning ecology and environmental quality. The Council makes the rules that govern the Environmental Impact Statement process (HRS 343). Agendas of their regular meetings are posted on the Internet and the public is invited to attend. The Council recently completed the repeal of Hawai'i Administrative Rules (HAR) Chapter 11-200 and adoption of HAR Chapter 11-200.1.

Agency Exemption Lists

Government agencies may keep a list describing the minor activities they regularly perform that are exempt from the environmental review process. These lists and any amendments shall be submitted to the Council for review and concurrence (HAR 11-200.1-16). This bulletin will publish an agency's draft exemption list for public comment prior to Council decision making, as well as notice of the Council's decision on the list.

Endangered Species

This bulletin is required by [HRS 343-3\(c\)](#), to publish notice of public comment periods or public hearings for Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), or Incidental Take Licenses (ITL) under the federal Endangered Species Act, as well as availability for public inspection of a proposed HCP or SHA, or a proposed ITL (as a part of an HCP or SHA).