

Lecture 24 overview

1. SEPA

- Washington
- California
- Hawai'i

2. International EIA

State NEPAs

SEPAs:

- State laws patterned after NEPA
- 16 states: SEPA
- 11 states: limited review processes
- 23 states: no process

Applies to state & local actions,
including private actions

SEPAs

Similar to NEPA with exceptions:

- Required steps
- Type of documents
- Legal notices
- Roles of participants
- Timing of actions (state quicker)

Washington SEPA



Adopted in 1971

Drafted in consultation with Senator Jackson & staff

Strong substantive policy; similar procedural policy

Washington SEPA

RCW 43.21C.010. Purposes.

The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between man and his environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and stimulate the health and welfare of man; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.

Washington SEPA

(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Washington SEPA



Legislature created *Council on Environmental Policy* in 1974:

- Write rules to interpret and implement SEPA
- Created SEPA Guidelines, chapter 197-10 WAC (1976)

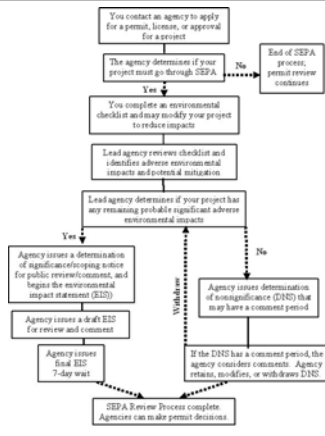
Washington SEPA



- Categorical exemptions
- Environmental checklist
- DNS: Determination of nonsignificance
- ODNS: Optional Determination of nonsignificance
- MDNS: mitigated determination of nonsignificance
- DS: Determination of significance
- NOA: notice of application
- EIS: Environmental impact statement
- NAT: notice of action taken

SEPA Review Process

Overseen by
Dept. Of Ecology



Washington SEPA

Triggers:

- Application for permits
- Certifications
- Use of public funds
- Zoning changes
- Activities in special management areas
- Actions influencing protected species

Washington SEPA

Environmental Checklist:

- Abbreviated EA
- Not required to be open to public
- Must issue Notice of Decision (DS or DNS) within 90-120 d
- DS published in SEPA Register
- Mitigation must be included in permit or approved with enforcement

Washington SEPA

EIS:

- NOA in SEPA register
- No alternative sites for private action
- No preferred alternative
- Copies distributed to:
 - Ecology
 - Lead agency
 - Any commenting agency

Lecture 25 overview

California CEQA:

1. Policy
2. Implementation
3. Examples

California CEQA

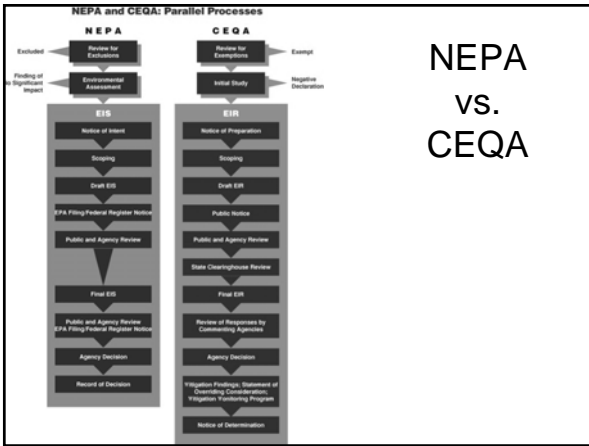


CEQA: California Environmental Quality Act
Enacted in 1970 under Gov. Reagan:

- Modeled after NEPA
- Significant extensions to policy
- Focus on land-use & environmental management
- Includes mitigation monitoring components

California CEQA

Categorical & Statutory exemptions
Initial study
ND: Negative declaration
MND: Mitigated negative declaration
NOE: Notice of exemption
NOP: Notice of preparation
DEIR: Draft environmental impact report
NOC: Notice of completion
FEIR: Final environmental impact report
NOD: Notice of determination



NEPA VS. CEQA

Initial Study

Equivalent to EA
 Simple checklist and citation of supporting evidence
 Used for threshold determination
Example

EIR

- Equivalent to EIS:
- Detailed effects on preferred alternative only
 - Must state environmentally preferred alternative
 - Impacts organized into 'classes'

AB 3180: 1988

“whenever a mitigated negative declaration is adopted or a public agency is responsible for mitigation pursuant to an EIR, the agency must adopt a program for monitoring or reporting on project compliance with the adopted mitigation”

Environmental Judges

Public law requires the Superior Court of each county with a population of 200,000 persons or more to appoint one or more judges to specialize in California Environmental Quality Act cases.

Hawaii SEPA

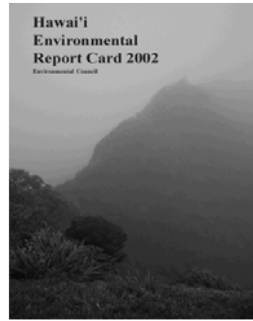


Policy, rules and enforcement established through a series of laws:

- Tightly modeled after NEPA
- Complex organizational structure
- Significant substantive policy
- High level of public input

Environmental Report Card

1. Published by Environmental Council
2. Annual Report
3. Similar to CEQ annual reports



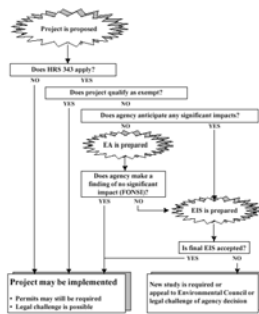
Guidebook

1. Written by OEQC
2. Updated in 1997
3. Easy to read

How HRS 343 Applies to all Projects

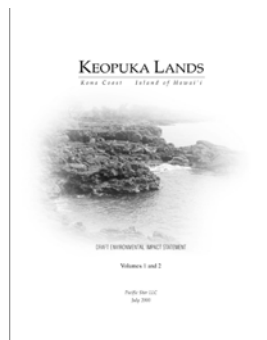


Environmental Review Decision-Making Process



Keopuka Development

- 125 Agricultural lots
- 18-hole golf course
- 100-unit club
- Potential impacts to water quality, coral reef, Kealakekua Bay, cultural resources
- 1145 pp.



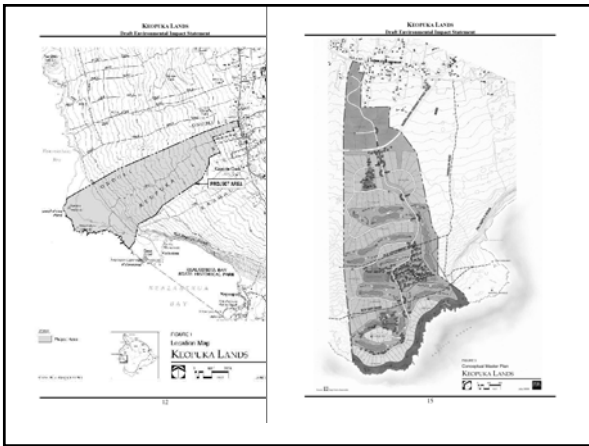


Table 9. Potential for Alternatives to Meet Project Objectives and Avoid Significant Environmental Impacts

Objective	No-Action	Preferred Alternative	High-Density Golf	5-Acre Agriculture Lots
Provide an economic generator	-	+	+	-
Provide agricultural lots	-	+	-	+
Provide recreational opportunities	-	+	+	-
Provide member/guest facilities	-	+	+	-
Avoid significant environmental impacts	+	+	-	o

Legend: + = Alternative satisfies objective.
 o = Alternative minimally satisfies the objective
 - = Alternative does not satisfy the objectives

Keopuka EIS

Marine Issues: Water quality (sediments & runoff); coral reef community, turtles, dolphins

1. **EIS:** Existing conditions, potential impacts and mitigation (3 pp.)
2. **Appendix C:** Baseline water quality and marine community (61 pp.)
3. **Appendix D:** Water quality and marine community monitoring program (23 pp)

Keopuka EIS



Water quality baseline:

- 28 stations
- 1 control station
- 1 "dry"/1 "wet" survey

Designed to trigger marine life survey

Keopuka EIS



Marine life baseline :

- Six stations
- One transect
- Six quadrats
- No control

Power analysis:

- Detect 30% change in *Porites compressa*
- Detect >80% change in *P. lobata*

Keopuka EIS: Critique

Water quality: only 1 control, inadequate baseline;
will not trigger marine life survey

Marine Life survey: no controls, too few samples;
will not detect meaningful change

Green turtles and spinner dolphins not properly surveyed

No attention to Kealakekua MLCD

International Context of NEPA

1. International NEPA provisions
2. Interpretation of applicability
3. Relationship to EO 12114

International Context of NEPA

Application:

1. Federal decisions that create actions abroad
2. Federal actions abroad
3. Federal impacts abroad
4. Global issues

NEPA Applicability

"Foley Doctrine"

Case law in conservative courts:

The activities of Federal agencies abroad are not bound by U.S. statutory law except where Congress has specifically imposed conditions

Greenpeace

Greenpeace USA vs. Stone
9th Circuit Court, 1990

- Joint plan for US and West German Army to remove and transport chemical weapons to Johnston Atoll
- EISs were prepared on the facility and disposal; prepared an EO required Global Commons Environmental Assessment on impacts of shipment to Johnston
- Plaintiffs filed suit on the grounds that the Army violated NEPA by failing to prepare a comprehensive EIS covering all aspects of the transportation and disposal of the stockpile

Greenpeace

Findings:

- Court was "not convinced that NEPA applied extraterritorially to the movement of munitions in Germany or their transoceanic shipment to Johnston Atoll"
- Recognized that "the language of NEPA indicates that Congress was concerned with the global environment and the worldwide character of environmental problems," but that actions under NEPA "should be taken 'consistent with the foreign policy of the United States.'"

Lujan

Lujan vs. Defenders of Wildlife et al.
Supreme Court, 1992

- DOI had interpreted that the ESA applied to all federally funded projects in, or outside the US
- Reagan administration changed the policy, deciding the law applied only to projects within the US
- Plaintiffs cited failure of the Agency for International Development (AID) to consult with DOI over funded projects in Sri Lanka and Egypt that threatened endangered elephants, leopards and crocodiles

Lujan

Findings:

- Plaintiff did not establish an injury sufficient to incur standing
- Plaintiffs must establish a causal connection between the injury and a legally protected interest
- Desire to view a species is a recognized interest but plaintiffs challenged procedural damage

International EIA

Model for International environmental protection:

- NEPA-like legislation adopted in the national laws of 83 nations
- The most imitated U.S. law in history

International EIA

1972: *Stockholm United Nations Conference on the Human Environment*

- Focused on environmental policy as a global concern
- Placed environmental issues on many national agendas
- NEPA presented as model policy

International EIA

Level of NEPA-like implementation varies:

- High: Canada & Europe
- Partial: Asia & Pacific
- Low: Latin America & Africa

International EIA

Regulates government & private actions

No alternatives: generally limited to analysis of proposed action only

May exclude social & economic impacts

May not involve the public

EIA in Europe

Established by Commission of the European Communities in 1988:

1. Major focus to ensure common policy across member states
2. To avoid distortion of competition and misallocation of resources

EIA in Canada

Established in 1973:

1. Separate program in each province
2. Extensive public involvement
3. Reviewed by independent panel if impacts questionable
4. Use mediator to resolve conflicts
5. Follow up programs to verify accuracy of EIA and effectiveness of mitigation

Developing Countries

Major challenges:

- Low compliance
- Limited legal authority
- Lack of clear procedural rules
- Lack of public meetings
- Lack of public interest

Next Time. . .

- Ethics & policy
