



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
235 South Beretania Street, Suite 702, Honolulu, HI 96813

Phone: (808) 586-4185  
Email: [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov)

David Y. Ige  
Governor

Chairperson  
Joseph Shacat

Vice Chair  
Scott Glenn  
(Ex Officio)

Members  
Roy Abe  
Mary Begier  
Stephanie Dunbar-Co  
Maka'ala Ka'auomoana  
P. Ka'ano'hi Kaleikini  
I. Robin Kaye  
Theresita Kinnaman  
Robert Parsons  
Charles Prentiss  
Ron Terry  
Puananiaonaona  
Thoene  
Michael Tulang  
N. Mahina Tuteur

State of Hawai'i Environmental Council  
Tuesday, September 5, 2017, 12:00 PM - 3:00 PM  
Leiopapa A Kamehameha Bldg.  
Room 1500, 235 S. Beretania St, Honolulu, Hawaii 96813

## Agenda

1. Call to order, roll call and quorum, introductions
2. Review and approval of prior meeting minutes
  - a. Meeting held on August 22, 2017
3. Report from Information & Outreach Committee
  - a. Potential initiatives on stormwater pollution control
    - i. Public-private partnership with the visitor industry
    - ii. State water quality standards and current point and non-point source discharge permitting and compliance challenges
  - b. Hawaii Conservation Conference recap
  - c. Toxoplasmosis update
  - d. Lehua Island rat eradication project
4. Report from Annual Committee Report
  - a. General discussion of 2017 Annual Report
    - i. Review of content planned for the Annual Report
    - ii. Articles and authors for up to six environmental issues
    - iii. Format, methods of outreach, budget
  - b. Timeline for 2017 Annual Report
  - c. Additional strategies for preparing and promoting the Annual Report
5. General correspondence received (not related to revisions of Hawaii Administrative Rules Chapter 11-200, Environmental Impact Statement Rules)
  - a. Email from former Council member Glenn Teves regarding concerns about Rat Lungworm (see Attachment A).
6. Review and discussion of comments received on Hawaii Administrative Rules Chapter 11-200, Environmental Impact Statement Rules, Version 0.1
  - a. See Attachment B for correspondence received between August 21 and August 29, 2017 (additional correspondence received after August 29, 2017 will be distributed at the meeting)
7. Review and discussion of Hawaii Administrative Rules Chapter 11-200, Environmental Impact Statement Rules, Version 0.2 (to be posted at <http://health.hawaii.gov/oeqc/> when available, or distributed at the meeting)
8. Adjournment

17 AUG 30 13:03

LIEUTENANT GOVERNOR'S  
OFFICE

Note: Public comments will be accepted on each agenda item prior to voting or completion of the agenda item.

Note: The Council may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a), Hawaii Revised Statutes ("HRS"), without noticing the executive session on the agenda where the executive session was not anticipated in advance. The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded and entered into the minutes of the meeting. HRS Sections 92-4, 92-5(a) and 92-7(a).



Joseph Shacat [REDACTED]

---

## Rat Lung Worm

---

Glenn Teves [REDACTED]

Mon, Aug 21, 2017 at 10:08 AM

To: [REDACTED] "Glenn, Scott J." &lt;scott.glenn@doh.hawaii.gov&gt;

Aloha Joseph & Scott,

Hoping all is well on the Environmental Council.

The control of rat lung worm is a DOH function, under Environmental Health. Vector Control Positions were approved by the LEG recently, but have yet to be filled. On the DOH website, the director was talking about new funding for these positions. When someone brought it up about these positions not being filled, this announcement was removed from the website. We haven't had a DOH vector control person on Molokai for several years. The cases on Oahu should have raised some level of not only awareness, but the need to develop a program.

Extension has been doing the education side, but this is not enough. These state agencies should be teaming up to execute a full fledged assault on this problem because it will affect not only agriculture but also the tourism industry.

Maybe something happening at a higher level can help to push this agenda forward. Are you folks talking about it at the EC? Just wanted to bring this to your attention.

I see you folks doing a rewrite of the EIS/EA process and that's a monster.

Take,

Glenn

Attachment A

## Edits to Rules Version 2017.01 footnotes

Footnote 22: Add quotes around "cultural" and "environment"  
Just a thought: "align the definition with Act 50" instead of current language

Footnote 41, 1<sup>st</sup> line: replace "this" with "that"

Footnote 56: put "anymore" at the end of the sentence

Footnote 63: Add quotes around the word "final"

Footnote 71: change "phrase" to "phrased" (think we discussed this already)

Footnote 72: change to Clarifies that the "agency" is the "approving agency."

Footnote 74: add the word "the" between "that" and "approving"

Footnote 106: change "direction" to "direct"

Footnote 116, last line: not sure "and compiles" is necessary

Footnote 118, 2<sup>nd</sup> line: add "of" between "use" and "state"  
3<sup>rd</sup> line: should "and" be "or"? Just checking

Footnote 126, 2<sup>nd</sup> line: change "five years concurrence" to "five-year concurrence"

Footnote 129: and "a" between "has" and "duty"

Footnote 143: change "distribute" to "distribution" to match section heading

Footnote 150, 2<sup>nd</sup> line: change "30" to "thirty" to be consistent with first line

Footnote 156: change "distribute" to "distribution" to match section heading

Footnote 157: change "distribute" to "distribution" to match section heading

Footnote 167: delete comma after "Act 172"

Footnote 172: change "to" to "regarding" → to read: Adds clarity regarding how to count days

Footnote 173: change "not" to "no"

Footnote 174: delete "as"

Footnote 179, 5<sup>th</sup> line: change “and providing” to “to provide”  
6<sup>th</sup> line: delete “the” before “identical”

Footnote 180: add comma after “document” and change “so” to “and therefore” → to read:  
The applicant prepares the document, and therefore has the responsibility . .

Footnote 183: same comments as Footnote 179

Footnote 186: think this footnote could use more clarity

Footnote 191: change “3” to “three” to be consistent

Footnote 212: change “as well as being able to” to “and may”

Footnote 214: change “3” to “three” to be consistent

Footnote 219: missing period at end of sentence

Footnote 245: change “to see” to “clarify”

Footnote 257: change “EI” to “EIS”

Footnote 260: perhaps change “case history” to “case law”

Footnote 265: add quotes around the word “cultural”

Footnote 268: add quotes around the word “cultural”

Footnote 271: add quotes around the word “statement”

Footnote 275: add quotes around the word “statement”

Footnote 283: finish sentence

Footnote 287: add quotes around the word “any”

Footnote 296: add “that” between clarifies and this

Footnote 296: add quotes around the word “detail”

Footnote 315: same comments as Footnote 179

Footnote 319: delete “i.e.,”

Footnote 330: maybe replace “cases” with “situations” to clarify that we’re not referring to legal cases

Footnote 339: maybe add a comma after “sentence” and change “at” to “clarifying that”

Footnote 348: missing period

Footnote 350: missing period

Footnote 354: change “EC” to “Council”

Footnote 355: capitalize “Council” to be consistent

Footnote 364: add the word “statutory” in “Massachusetts language”

Footnote 365: maybe spell out what “WAC” is

Footnote 371: add the word “when” between “versus” and “further”

Footnote 376: change “could” to “can”

Footnote 378: change “boundary” to “limit” and put quotes around “substantial commencement”

Additional R. Adee  
Comments - 8/20/17

PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council Permitted Interaction Group Report

Potential Amendments to HAR Chapter 11-200. Environmental Impact Statements

What about applicant? Not clear what applicant's role is. Later sections for EIS use terms like

§11-200-10 Contents of an Environmental Assessment <sup>proposing agencies and applicants.</sup>

The proposing agency or approving agency shall prepare any draft or final environmental assessment EA 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. The environmental assessment EA shall contain, but not be limited to, the following information: (See p 51.)

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;

Is it clear when it is applicable?

- (3) Identification of agencies, citizen groups, and individuals consulted in making preparing<sup>186</sup> the assessment;

Also, on p. 19, line 8 and 16, it says applicant prepares EA.

- (4) General description of the action's technical, economic, social, and environmental characteristics;

- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;

- (6) Identification and summary analysis<sup>187</sup> of impacts and alternatives considered;

- (7) Proposed mitigation measures;

- (8) Agency determination ~~or~~ for draft environmental assessments EAs <sup>final and</sup> an anticipated determination ~~for draft EAs.~~

Would this be clearer?

- (9) Findings and reasons supporting the agency determination or anticipated determination;

- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;

- (11) List of all required<sup>188</sup> permits and approvals (State, federal, county) required and identification of which are considered to be discretionary<sup>189</sup>; and

- (12) Written comments and responses to the comments ~~under~~ received pursuant to<sup>190</sup> the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods.

28 <sup>186</sup> Uses more accurate time consistent with language in the rules.  
 29 <sup>187</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood  
 30 to mean a lengthy discussion. It means that the impact discussion section should identify an impact and  
 31 provide a detailed discussion sufficient to support a conclusion. Summaries tend to be assertions of  
 32 impact and the degree of significance without presenting a supporting argument.  
 33 <sup>188</sup> Housekeeping. Moves the word required from the end of the clause to before the word "permits".  
 34 <sup>189</sup> Adds identification of approvals that are considered discretionary. This helps to inform why an  
 35 applicant is undergoing chapter 343, HRS, and when a proposed action has reached "substantial  
 36 commencement" for the purposes of a supplemental EIS.  
 37 <sup>190</sup> Housekeeping.

**PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**  
Environmental Council Permitted Interaction Group Report  
Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

- 1 (bc) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
2 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
3 of receipt by the office in accordance with section 11-200-3.
- 4 (ed) The notice of determination shall indicate in a concise manner:  
5 (1) Identification of the<sup>204</sup> applicant or proposing agency;  
6 (2) Identification of the approving agency or<sup>205</sup> accepting authority;  
7 (3) ~~Brief A brief~~<sup>206</sup> description of the<sup>207</sup> proposed action;  
8 (4) ~~Determination~~ The determination<sup>208</sup>;  
9 (5) Reasons supporting the<sup>209</sup> determination; and  
10 (6) ~~Name~~ The name<sup>210</sup>, title, contact information, including the email address,  
11 physical<sup>211</sup> address, and phone number of contact person for further information.
- 12 (de) When an agency withdraws a document, determination, or both<sup>212</sup> pursuant to ~~its~~ the  
13 agency's<sup>213</sup> rules, the agency shall submit to the office a written letter informing the office  
14 of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
15 with section 11-200-3.
- 16 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

17 <sup>204</sup> Housekeeping.

18 <sup>205</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for  
19 EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

20 <sup>206</sup> Housekeeping.

21 <sup>207</sup> Housekeeping.

22 <sup>208</sup> Housekeeping.

23 <sup>209</sup> Housekeeping.

24 <sup>210</sup> Housekeeping.

25 <sup>211</sup> Includes email as a requirement for contact information. Most communication is done by email so  
26 providing that is just as important as a phone number or physical mail address.

27 <sup>212</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a  
28 determination (i.e., EISPN or FONSI).

29 <sup>213</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules;  
30 determinations rest with the agency and are made pursuant to that agency's rules, procedures, and  
31 practices.

*Definition on p. 7 indicates  
"may" be the same. Resolve conflict?*



PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES  
Environmental Council Permitted Interaction Group Report  
Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

## §11-200-12 Significance Criteria

1 (a) In considering the significance of potential environmental effects, agencies shall consider  
2 the sum of effects on the quality of the environment;<sup>239</sup> and shall evaluate the overall and  
3 cumulative effects of an action.

4 (b) In determining whether an action may have a significant effect on the environment, the  
5 agency shall consider every phase of a proposed action, the expected consequences,  
6 both primary and secondary, and the cumulative as well as the short-term and long-term  
7 effects of the action. In most instances, an action shall be determined to have a  
8 significant effect on the environment if it:

Isn't it  
the extent  
that matters?

Should this be defined?

- 9 (1) Involves an irrevocable commitment to less or destruction of any natural or  
10 cultural resource irrevocably commits a natural resource<sup>240</sup>. *like oil, rocks, iron, etc. are all natural resources.*
- 11 (2) Curtails the range of beneficial uses of the environment;
- 12 (3) Conflicts with the state's long-term environmental policies or long-term  
13 environmental<sup>241</sup> goals and guidelines as expressed in chapter 344, HRS, or  
14 other laws.<sup>242</sup> and any revisions thereof and amendments thereto, court  
15 decisions, or executive orders;
- 16 (4) Substantially Adversely<sup>243</sup> affects the economic welfare, or social welfare, or  
17 cultural practices<sup>244</sup> of the community or State;
- 18 (5) Substantially affects public health;
- 19 (6) Involves substantial secondary impacts, such as population changes or effects  
20 on public facilities; *Not defined? Qualitative?*
- 21 (7) Involves a substantial degradation of environmental quality; *(typical all over)*
- 22 (8) Is individually limited but cumulatively has considerable effect upon the  
23 environment or involves a commitment for larger actions;
- 24 (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- 25 (10) Detrimentially affects air or water quality or ambient noise levels;
- 26 (11) Affects or is likely to suffer damage by being located in an environmentally  
27 sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area,  
28 geologically hazardous land, estuary, fresh water, or coastal waters;

29 <sup>239</sup> Housekeeping.

30 <sup>240</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

31 <sup>241</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

32 <sup>242</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is  
33 not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals  
34 such as the State Planning Act.

35 <sup>243</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is  
36 not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals  
37 such as the State Planning Act.

38 <sup>244</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language  
39 was amended by Act 50 (2000) to include cultural practices as part of significance.

Should these be larger & bolder? Include in Table of Contents?

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 **§11-200-14 General Provisions**

Should this be defined better? Includes applicants? Line 1 on page 35 makes things confusing.

3 Chapter 343, HRS, directs that in both agency and applicant actions where statements EISs are  
4 required, the preparing party shall prepare the EIS, submit it for review and comments, and  
5 revise it, taking into account all critiques and responses. Consequently, the EIS process  
6 involves more than the preparation of a document; it involves the entire process of research,  
7 discussion, preparation of a statement, and review. The EIS process shall involve at a minimum:

Doesn't applicant prepare the EIS?

- 8 (1)<sup>245</sup> identifying Identifying environmental concerns,
- 9 (2) Conducting no fewer than one EIS public scoping meeting.<sup>246</sup>
- 10 (3) obtaining Obtaining various relevant data,
- 11 (4) conducting Conducting necessary studies,
- 12 (5) receiving Receiving public and agency input,
- 13 (6) evaluating Evaluating alternatives, and
- 14 (7) proposing Proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts.

15 An EIS is meaningless without the conscientious application of the EIS process as a whole, and  
16 shall not be merely a self-serving recitation of benefits and a rationalization of the proposed  
17 action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in  
18 the planning and decision-making process. This shall assure an early open forum for discussion  
19 of adverse effects and available alternatives, and that the decision-makers will be enlightened to  
20 any environmental consequences of the proposed action prior to decision making<sup>247</sup>.

21 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

If seems all of this should be considered for EIS also.

22 <sup>245</sup> Housekeeping. Breaks the paragraph up and helps to see the minimum elements of the EIS process.

23 Renumbers paragraphs based on addition of public scoping meeting.

24 <sup>246</sup> Requires at least one public scoping meeting for an EIS.

25 <sup>247</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

## §11-200-15 Consultation Prior to Filing a Draft Environmental Impact Statement

- 1 (a)<sup>248</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS  
2 without first requiring an EA, shall indicate in a concise manner:
- 3 (1) Identification of the proposing agency or applicant;  
4 (2) Identification of the accepting authority;  
5 (3) The determination;  
6 (4) Reasons supporting the determination;  
7 (5) A description of the proposed action and its location;  
8 (6) A description of the affected environment and include regional, location, and site  
9 maps;  
10 (7) Possible alternatives to the proposed action;  
11 (8) The proposing agency's or applicant's proposed scoping process, including when  
12 and where the EIS public scoping meeting or meetings will be held;  
13 (9) The name, title, contact information, including the email address, physical  
14 address, and phone number of contact person for further information.<sup>249</sup>
- 15 (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all  
16 appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>250</sup> citizen groups, and  
17 concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end,  
18 agencies and applicants shall endeavor to develop a fully acceptable draft<sup>251</sup> EIS ~~prior to~~  
19 ~~the time the EIS is filed with the office,~~ through a full and complete consultation process,  
20 and shall not rely solely upon the review process to expose environmental concerns. At  
21 ~~the discretion of the proposing agency or an applicant, a~~ A public scoping meeting ~~to~~  
22 ~~receive comments on the final environmental assessment (for the EIS preparation notice~~  
23 ~~determination) setting forth~~ addressing the scope of the draft EIS ~~may shall~~<sup>252</sup> be held  
24 within the thirty-day public review and comment period in subsection (bc), ~~provided that~~  
25 ~~the proposing agency or applicant shall treat oral and written comments received at such~~  
26 ~~a meeting as indicated in subsection (d)~~<sup>253</sup>.
- need this?*  
*Seems confusing.*

27 <sup>248</sup> Creates a new paragraph and renumbers subsequent paragraphs.

28 <sup>249</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going  
29 directly to preparing the EIS.

30 <sup>250</sup> Housekeeping.

31 <sup>251</sup> Clarifies that the document is a draft EIS.

32 <sup>252</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the  
33 scope of the draft EIS should be.

34 <sup>253</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to  
35 add clarity to the comments submitted and removes the preparer's interpretation of oral comments.

↑  
plural?

**PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**  
Environmental Council Permitted Interaction Group Report  
Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

**§11-200-23 Acceptability**

- 1 (a) Acceptability of ~~a statement~~ a final EIS<sup>320</sup> shall be evaluated on the basis of whether the  
2 ~~statement~~ final EIS<sup>321</sup>, in its completed form, represents an informational instrument  
3 which fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS.<sup>322</sup> and  
4 adequately discloses and describes all identifiable environmental impacts and  
5 satisfactorily responds to review comments.
- 6 (b) A ~~statement~~ final EIS<sup>323</sup> shall be deemed to be an acceptable document by the accepting  
7 authority or approving agency only if all of the following criteria are satisfied:  
8 (1) The procedures for assessment, consultation process, review, and the  
9 preparation and submission of the ~~statement~~ EIS, from proposal of the action to  
10 publication of the final EIS.<sup>324</sup> have all been completed satisfactorily as specified  
11 in this chapter;  
12 (2) The content requirements described in this chapter have been satisfied; and  
13 (3) Comments submitted during the review process have received responses  
14 satisfactory to the accepting authority, or approving agency, and have been  
15 appropriately<sup>325</sup> ~~incorporated in~~ into the statement final EIS<sup>326</sup>, and comments and  
16 responses have been appended to the final EIS<sup>327</sup>.
- 17 (c) For actions proposed by agencies, the proposing agency may request the office to make  
18 a recommendation regarding the acceptability or non-acceptability of the EIS. In all  
19 cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>328</sup> authorized  
20 representative shall have final authority to accept the EIS. In cases involving only county  
21 funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>329</sup> authorized  
22 representative shall have final authority to accept the EIS. The accepting authority shall  
23 take prompt measures to determine the acceptability or nonacceptability of the  
24 proposing agency's statement. In the event that the action involves both state and

*EIS? Should scan document and fix all.*

25 <sup>320</sup> Clarifies that the document is a final EIS.  
26 <sup>321</sup> Clarifies that the document is a final EIS.  
27 <sup>322</sup> Clarifies that the EIS must meet all applicable elements of environmental review.  
28 <sup>323</sup> Clarifies that the document is a final EIS.  
29 <sup>324</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates  
30 environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.  
31 <sup>325</sup> Recognizes that not all comments are incorporated into an EIS.  
32 <sup>326</sup> Clarifies that the document is a final EIS.  
33 <sup>327</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring  
34 comments and responses are appended to the document.  
35 <sup>328</sup> Housekeeping.  
36 <sup>329</sup> Housekeeping.

PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES  
Environmental Council Permitted Interaction Group Report  
Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

1 Subchapter 9 National Environmental Policy Act

**§11-200-25 National Environmental Policy Act Actions:  
Applicability to Chapter 343, HRS**

2 When ~~the situation occurs where~~<sup>356</sup> a certain action will be subject both to the National  
3 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
4 Public Law 94-83; 42 U.S.C. §4321-4347) and chapter 343, HRS, the following shall occur:

5 (1) The applicant or agency, upon discovery of its proposed action being subject to  
6 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>357</sup>, shall  
7 notify the responsible federal agency, the office, and any agency with a definite  
8 interest in the action (as prescribed by chapter 343, HRS) ~~of the situation~~.<sup>358</sup>

9 (2) Where a federal agency determines that the proposed action is exempt from  
10 review under the NEPA, the determination does not automatically constitute an  
11 exemption for the purposes of this chapter. In such cases, state and county  
12 agencies remain responsible for compliance with this chapter. However, the  
13 federal exemption may be considered in the state or county agency  
14 determination.<sup>359</sup>

15 (3) Where a federal agency issues a FONSI and concludes that a statement is not  
16 required under the NEPA, the determination does not automatically constitute  
17 compliance with this chapter. In such cases, state and county agencies remain  
18 responsible for compliance with this chapter. However, the federal FONSI may be  
19 considered in the state or county agency determination.<sup>360</sup>

20 (24) ~~The National Environmental Policy Act~~ NEPA<sup>361</sup> requires that draft<sup>362</sup> statements  
21 EISs<sup>363</sup> be prepared by the responsible federal agency. In the case of actions for  
22 which an EIS pursuant to the NEPA has been prepared by the responsible

23 <sup>356</sup> Housekeeping.

24 <sup>357</sup> Housekeeping.

25 <sup>358</sup> Housekeeping.

26 <sup>359</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions. State and  
27 county agencies must still make a determination that the action is exempt, requires an EA, or may  
28 proceed directly to preparing an EIS.

29 <sup>360</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may  
30 still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as  
31 the state or county agency has considered HEPA-specific content requirements, either through the federal  
32 FONSI or through its own judgment and experience.

33 <sup>361</sup> Housekeeping.

34 <sup>362</sup> Language is applicable to draft and final.

35 <sup>363</sup> Housekeeping.

an EIS?

Need to be defined?

PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES  
Environmental Council Permitted Interaction Group Report  
Potential Amendments to HAR Chapter 11-200. Environmental Impact Statements

1 Subchapter 10 Supplemental Statements

*need requirements for  
Supplemental EIS?  
or no such thing?*

2 **§11-200-26 Supplemental EIS<sup>373</sup> General Provisions**

3 (a) A ~~statement~~ An EIS that is accepted with respect to a particular action is usually  
4 qualified by the size, scope, location, intensity, use, and timing of the action, among  
5 other things. ~~A statement~~ An EIS that is accepted with respect to a particular action shall  
6 satisfy the requirements of this chapter and no other supplemental statement EIS for that  
7 proposed action shall be required, ~~to the extent that the action has not changed~~  
8 substantively in size, scope, intensity, use, location or timing, among other things. If  
9 there is any change in any of these characteristics which may have a significant effect,  
10 the original statement that was changed shall no longer be valid because an essentially  
11 different action would be under consideration and a supplemental statement shall be  
prepared and reviewed as provided by this chapter. unless:

- 12 (1) The project has changed substantively in the following characteristics: size,  
13 scope, use, location or timing, among other things, which may have a significant  
14 effect; or<sup>374</sup>  
15 (2) New information indicating significant effects, which was not known and could not  
16 have been known at the time the EIS was accepted as complete, becomes  
17 available.<sup>375</sup>

- 18 (b) In the case of newly discovered information, the decision to require preparation of a  
19 supplemental EIS must be based on the following criteria:  
20 (1) The information can be from any source.  
21 (2) The information must be newly discovered. It cannot be information that could  
22 have been included in comments filed in the original draft EIS or final EIS.  
23 (3) The information must be important, indicating probably significant environmental  
24 impacts.  
25 (4) The information must not have been addressed in the prior EIS, or must have  
26 been inadequately addressed.<sup>376</sup>

27 (c) As long as there is no change in a proposed action or information indicating significant  
28 effects resulting in individual or cumulative impacts not originally disclosed, the  
29 statement EIS associated with that action shall be deemed to comply with this chapter.

30 <sup>373</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and  
31 programmatic EISs).

32 <sup>374</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

33 <sup>375</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

34 <sup>376</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge  
35 could be used as a reason to require a supplemental EIS.