



# 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)

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State of Hawai'i Environmental Council  
Tuesday, October 31, 2017, 10:00 AM - 3:00 PM  
Hawai'i State Capitol  
Room 325, 415 South Beretania Street, Honolulu, Hawaii 96813

1. Call to order, roll call and quorum, introductions
2. Review and approval of prior meeting minutes
  - a. Meeting held on October 18, 2017
3. 2017 Annual Report – Status Update
4. Environmental Council meeting schedule for 2018
5. Review and discussion of proposed revisions to Hawai'i Administrative Rules Chapter 11-200, Environmental Impact Statement Rules.
  - a. Discussion to be based on the working draft Version 0.3, to be made available prior to the meeting at: <http://health.hawaii.gov/oeqc/rules-update/>. (Visit <http://eepurl.com/cYjluL> to sign up to receive emails on the rules update.)
  - b. See Attachment A (373 pages) for correspondence received as of October 20, 2017 providing comments on Version 0.2.
  - c. Version 0.3 features a proposed reorganization of the administrative rules. For discussion purposes, Version 0.3 refers to the proposed language as "Chapter 11-200A" and each section number is followed by "A" (e.g., HAR Section 11-200A-3A).
  - d. Discussion of proposed definitions for "programs" and "projects" and characterizing them for going through environmental review.
6. Adjournment

Note: The Council will recess for lunch from approximately 12:00 – 12:45.

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).

17 OCT 25 P 1 :23

LIEUTENANT GOVERNOR'S  
OFFICE

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

September 5, 2017

Mr. Joseph Shacat  
Chairperson  
State Environmental Council  
Department of Health, State of Hawaii  
235 South Beretania Street, Suite 702  
Honolulu, HI 96813

Dear Mr. Shacat:

Subject: Proposed Revisions to Hawaii Administrative Rules (HAR) Chapter 11-200,  
Environmental Impact Statement Rules

Thank you for your letter dated August 15, 2017, requesting comments on the proposed revisions to HAR Chapter 11-200, Environmental Impact Statement Rules.

The Department of Health does not have any comments on the proposed rule changes.

The Department reviews all permit applications regardless if it triggers the Environmental Assessment (EA) or Environmental Impact Statement (EIS) process.

Again, thank you for the opportunity to comment.

Sincerely,

VIRGINIA PRESSLER, M.D.  
Director of Health

c: Keith E. Kawaoka, Deputy Director for Environmental Health

PAGE	SECTION	LINE(S)	COMMENTS
19	11-200-6	14 to 16	Clarify revised sentence: "Chapter 343, HRS establishes certain categories of action that require processing the applicant to prepare an EA." RECOMMEND: "Chapter 343, HRS, establishes certain categories of action that require the applicant to prepare an EA."
22	11-200-8 (a)	9 to 14	Clarify revised sentence: " Government activities that do not rise to the level of being a project or program, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs for the purposes of Chapter 343, HRS.107." RECOMMEND: 1) Define "progarm" and 2) Define "neglibibly"
23	11-200-8 (a) (8)	20-23	As revised, 11-200-8 (a)(8) states: "Demolition of structures, except those structures located on any historic site as designated in the national register or Hawai'i register." RECOMMEND: The sentence should read "Demolition of structures or buildings, except those eligible for or listed on the National Register of Historic Places and/or Hawai'i Register of Historic Places".
22 to 24	11-200-8	General	RECOMMEND: Add provision for State DOD common activities: i.e. air operations on state land, simulated war games, specific training activities, grants of land acquisition, haz waste management). Basically, these are some of the major federal Categorical Exemptions (Cat Exs), which the Hawaii Army National Guard often uses and would prefer that these activities be clearly identified in the regs, and not obtained via a separate "exemption notice".
25	11-200-8 Footnote # 23	23 to 26	Footnote #23 states: Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence. COMMENT: The Hawaii Army National Guard (HIARNG) via the State DOD was solicited by the Environmental Council (EC)/OEQC to provide a list of DOD's existing State EA Exemptions for continued EC concurrence. DOD's existing list of State exemptions was submitted in addition to specified additional exemptions for concurrence (The additional exemptions mirrored federal NEPA Categorical Exemptions). HIARNG requests EC response to the subject exemption concurrence requests.
33	11-200-9.1	14	RECOMMEND: ". . .comments a . . ." be ". . . comments and . . ."
37	11-200-11.1	28 to 29	Page 37, lines 28-29 (describes footnote #199), lines 32-33 (footnote #202) and lines 34-35 (footnote #203) all state that "Electronic documentation can be submitted and electronic distribution is acceptable," however, this other means of submittal or distribution is not specifically stated in the referenced (footnoted) texts of provisions. RECOMMEND: Subparagraph (b) should state explicitly that electronic documentation can be submitted and electronic distribution is acceptable.
40	11-200-11.2	19 to 21	Footnote #225: states the following: Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted. RECOMMEND: Comment: The acceptability of one (1) copy of the notice and final EA as well as acceptability of electronic document submittal should be explicitly stated in the referenced text/provision.
40	11-200-11.2	22 to 23	Footnote #226) states that approving agencies may send their determination to the applicant directly and that electronic distribution would also be acceptable. RECOMMEND: The acceptability of electronic distribution should be stated in the referenced text/provision.
47	11-200-15	25	Footnote #257) states: Replaces final EIS with draft EI, mirroring the previous sentence. RECOMMEND: Should state: Replaces final EIS with draft EIS.
53	11-200-17	11	Should state "draft" EIS.
57	11-200-20	General	Although the acceptability of electronic document submittals is implied, it should be stated explicitly in a provision of the section.
65	subparagraph (2)	9 to 14	Proposed Section 11-200-25 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS - Please see HIARNG Comments to Page 25, Footnote 23.

## HAR 11-200 Update

Gyotoku, Neil <Neil.Gyotoku@hawaiicounty.gov>

Wed 9/6/2017 5:17 PM

To: HI Office of Environmental Quality Control <HIOfficeofEnvironmentalQ@doh.hawaii.gov>;

The Office of Housing and Community Development supports the Potential Amendments to HAR Chapter 11-200, including the proposed exemption to support affordable housing for:

(11) “New construction of affordable housing that only has use of state or county lands or funds as the requirements for undergoing chapter 343, HRS, and as proposed residential or mixed use zoning classification, and applicable federal, state, and county development standards.”

Thank you.

Neil S. Gyotoku, Housing Administrator  
Office of Housing and Community Development  
[50 Wailuku Drive, Hilo, Hawaii 96720](#)  
Phone: (808) 961-8379 / Fax: (808) 961-8685  
e-mail: [neil.gyotoku@hawaiicounty.gov](mailto:neil.gyotoku@hawaiicounty.gov)



DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

September 7, 2017

Mr. Scott Glenn, Director  
Office of Environmental Quality Control  
Department of Health  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Dear Mr. Glenn:

Subject: Proposed Amendments to Chapter 11-200, Hawaii  
Administrative Rules, Environmental Impact Statement Rules

RECEIVED  
17 SEP 13 AM 8:41  
OFC. OF ENVIRONMENTAL  
QUALITY CONTROL

I understand that the Hawaii Environmental Council is seeking consultation with state and county agencies regarding proposed amendments to its rules, chapter 11-200, Hawaii Administrative Rules, Environmental Impact Statement Rules and that agency comments should be directed to you. We have the following objections to the proposed amendments to section 11-200-8, Exempt Classes of Action, at items (1) – (2), below, and explain the Hawaii Department of Agriculture’s (HDOA) rationale at item (3), below.

(1) Proposed deletion of section 11-200-8(a)(10).

The draft amendment would delete exemption class (10), which reads: “Continuing administrative activities including, but not limited to purchase of supplies and personnel related actions.” (emphasis added.) Footnote 113 to this proposed deletion says the deleted language is addressed in the section’s revised paragraph (a). But that does not seem to be the case. Paragraph (a) essentially says that “administrative actions involving personnel only” are exempt from EA preparation. But paragraph (a) is otherwise silent as to what will happen to continuing administrative activities currently eligible for exemption under exemption class (10) of an agency’s exemption list, if exemption class (10) is deleted.

(2) Proposed new subsection 11-200-8(f).

Draft subsection 11-200-8(f) says that if an agency exemption list received Environmental Council concurrence more than 5 years ago, the agency “must undertake a systematic analysis to determine whether the action merits exemption consistent with one or several of the types [of activity] listed in paragraph (a)” and then the agency must “obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.” However, as discussed above, revised paragraph (a), does not address the types of agency “continuing administrative activities” that are currently eligible for exemption pursuant to earlier Environmental Council concurrence, other than those activities involving personnel. The rule



18-154.

Mr. Scott Glenn  
September 7, 2017  
Page 2

section does not identify how agencies affected by the proposed 5-year sunset provision are to proceed in this regard. A copy of the proposed amendments to section 11-200-8, HAR, is attached.

(3) Keeping exemption class (10) for agency continuing administrative activities is warranted.

Eligibility for exemption remains necessary and appropriate for HDOA's continuing administrative activities under exemption class (10). In 2008, the HDOA obtained the Environmental Council's concurrence for HDOA Plant Industry Division's list of exemptions from EA, which includes exemption class (10) for, among other continuing and statutorily mandated activities, Plant Quarantine Branch permitting for plant, animal, and microorganism import, subject to permit conditions that eliminate or minimize risks associated with the organism or its use. In the import review process, certain kinds of import applications routinely trigger chapter 343, HRS, review by virtue of intended use of the imported organism in a project on state or county land or that uses state or county funds. These import applications often involve University of Hawaii medical or scientific research projects or commercial or research aquaculture projects at the Natural Energy Laboratory of Hawaii Authority in Kona, and generally take place in standard laboratory settings or facilities where the risks are well understood and addressed by permit conditions tailored to eliminate or minimize risk to the environment, as recommended by advisory technical consultants with expertise in the relevant scientific subject area. These experts and outside agencies with jurisdiction also advise HDOA on the propriety of an exemption.

HDOA relies on eligibility for exemption from EA preparation, when appropriate, in processing import applications for routine type projects like those described above, as provided in exemption class (10) in HDOA Plant Industry Division's current list of exemptions. Pursuant to the Environmental Council's concurrence on this list of exemptions, HDOA implemented chapter 343's requirements regarding environmental review in the Plant Quarantine Branch import review process, and we have proceeded accordingly. No explanation is given in the Environmental Council's draft amendments for deleting exemption class (10) from the Council's rules and eliminating eligibility for exemption from EA for the types of continuing administrative activities that exemption class (10) in HDOA's list of exemptions currently includes. Nor do we see any recent changes to chapter 343, HRS, that authorize rule amendments to this effect.

We ask that the Environmental Council correct this problem before the proposed amendments proceed to public hearings. We may be commenting on other proposed amendments to the Council's rules later during the rulemaking process.

Sincerely,



for Scott E. Enright, Chairperson  
Board of Agriculture

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

**§11-200-8 Exempt Classes of Action Exemption**  
**Notices<sup>105</sup>**

- (a) Chapter 343, HRS, states that procedures whereby specific types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment, can be declared exempt from the preparation of an EA.<sup>106</sup> ~~a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.~~ Government activities that do not rise to the level of being a project or program, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only shall not be considered projects or programs for the purposes of Chapter 343, HRS.<sup>107</sup> Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption<sup>108</sup> ~~list represents exempt classes of action:~~
- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible minor<sup>109</sup> or no expansion or change of use beyond that previously existing;
  - (2) 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;
  - (3) 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, including, but not limited to:

<sup>105</sup> Renames to shift focus from the "classes" (a term no longer used) to the notice.

<sup>106</sup> Incorporates language direction from chapter 343, HRS.

<sup>107</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

<sup>108</sup> Replaces "classes" language with "types".

<sup>109</sup> Replaces "negligible" with "minor" because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

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- 1 (A) Single-family residences less than 3,500 square feet, as measured by the  
 2 controlling law under which the proposed action is being considered.<sup>110</sup>  
 3 not in conjunction with the building of two or more such units;
- 4 (B) Multi-unit structures designed for not more than four dwelling units if not  
 5 in conjunction with the building of two or more such structures;
- 6 (C) Stores, offices, and restaurants designed for total occupant load of twenty  
 7 persons or less per structure, if not in conjunction with the building of two  
 8 or more such structures; and
- 9 (D) Water, sewage, electrical, gas, telephone, and other essential public utility  
 10 services extensions to serve such structures or facilities; accessory or  
 11 appurtenant structures including garages, carports, patios, swimming  
 12 pools, and fences; and, acquisition of utility easements;
- 13 (4) Minor alterations in the conditions of land, water, or vegetation;
- 14 (5) Basic data collection, research, experimental management, and resource and  
 15 infrastructure testing and<sup>111</sup> evaluation activities ~~which that~~ do not result in a  
 16 serious or major disturbance to an environmental resource;
- 17 (6) Construction or placement of minor structures accessory to existing facilities;
- 18 (7) Interior alterations involving things such as partitions, plumbing, and electrical  
 19 conveyances;
- 20 (8) Demolition of structures, except those structures located on any historic site as  
 21 designated in the national register or Hawaii register ~~as provided for in the~~  
 22 ~~National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470,~~  
 23 ~~as amended, or chapter 6E, HRS~~<sup>112</sup>;
- 24 (9) Zoning variances except shoreline set-back variances; and<sup>113</sup>
- 25 ~~(10) Continuing administrative activities including, but not limited to purchase of~~  
 26 ~~supplies and personnel-related actions.~~<sup>114</sup>
- 27 ~~(14)~~<sup>115</sup> Acquisition of land and existing structures, including single or multi-unit dwelling  
 28 units, for the provision of affordable housing, involving no material change of use  
 29 beyond that previously existing, and for which the legislature has appropriated or  
 30 otherwise authorized funding<sup>116</sup>; and<sup>117</sup>

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31 <sup>110</sup> Counties and even different agencies within counties, measure residence area differently. This  
 32 language acknowledges the difference.

33 <sup>111</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or  
 34 effects on traffic patterns.

35 <sup>112</sup> Unnecessary language.

36 <sup>113</sup> Housekeeping.

37 <sup>114</sup> Deletes language because it is addressed at the beginning of paragraph (a).

38 <sup>115</sup> Housekeeping. Renumbering this and subsequent paragraphs.

39 <sup>116</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for  
 40 acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section  
 41 11-200-8 with HAR Chapter 11-200. This language incorporates and compiles the 2007 change.

42 <sup>117</sup> Housekeeping.

**PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**  
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- 1            (11) New construction of affordable housing that only has use of state or county lands  
 2            or funds as the requirement for undergoing chapter 343, HRS, and as proposed  
 3            is consistent with existing state urban land classification, existing county  
 4            residential or mixed use zoning classification, and applicable federal, state, and  
 5            county development standards.<sup>118</sup>
- 6            (b) All exemptions under the classes types<sup>119</sup> in this section are inapplicable when the  
 7            cumulative impact of planned successive actions in the same place, over time, is  
 8            significant, or when an action that is normally insignificant in its impact on the  
 9            environment may be significant in a particularly sensitive environment.
- 10           (c) Any agency, at any time, may request that a new exemption class type<sup>120</sup> be added, or  
 11           that an existing one be amended or deleted. The request shall be submitted to the  
 12           council, in writing, and contain detailed information to support the request as set forth in  
 13           section 11-201-16, environmental council rules.
- 14           (d) Each agency, through time and experience, shall develop its own list of specific types of  
 15           actions which fall within the exempt classes types above<sup>121</sup>, as long as these lists are  
 16           consistent with both the letter and intent expressed in ~~these exempt classes~~ here<sup>122</sup> and  
 17           chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the  
 18           council for review and concurrence. The lists shall be reviewed periodically by the  
 19           council.
- 20           (e)<sup>23</sup> Actions that are clearly covered by an agency exemption list that has received council  
 21           concurrence and do not have any potential to produce significant impacts do not require  
 22           documentation.<sup>124</sup> Actions with no documentation may still be subject to the public's right  
 23           to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.<sup>125</sup>

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24           <sup>118</sup> Adds affordable housing as an exemption type, with caveats the following caveats: 1) that the only  
 25           trigger is use state or county lands or funds (other triggers would mean the exemption is not applicable)  
 26           and that 2) the proposed action is consistent with existing land use controls so that it does not require  
 27           going before the LUC or Planning Commissions to get a change in SLUD or zoning.

28           <sup>119</sup> Housekeeping.

29           <sup>120</sup> Housekeeping.

30           <sup>121</sup> Housekeeping.

31           <sup>122</sup> Housekeeping.

32           <sup>123</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.

33           <sup>124</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de*  
 34           *minimis* but may not require the level of consultation and documentation associated with typical projects  
 35           or programs.

36           <sup>125</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers  
 37           are out" and the agency may have erred in its decision to not prepare an EA.



**PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**  
**Environmental Council Permitted Interaction Group Report**  
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- 1 (f) For an action that an agency considered exempt according to the criteria in paragraph  
 2 (a) but is not clearly covered by the agency's exemption list, or is on the agency's  
 3 exemption list but that list has not received council concurrence within the past five  
 4 years, the agency shall undertake a systematic analysis to determine whether the action  
 5 merits exemption consistent with one or several of the types listed in paragraph (a).<sup>126</sup>  
 6 For such actions, the agency shall obtain the advice of outside agencies or individuals  
 7 having jurisdiction or expertise as to the propriety of the exemption. An action may not  
 8 be segmented per section 11-200-7 so as to appear to be consistent with several types  
 9 listed in paragraph (a).<sup>127</sup>
- 10 (eg) Each agency shall maintain records of such<sup>128</sup> actions, called exemption notices,<sup>129</sup>  
 11 which it has found to be exempt from the requirements for preparation of an  
 12 environmental assessment EA in chapter 343, HRS, and each agency shall produce the  
 13 records for review upon request. The agency shall provide a means to notify and accept  
 14 input from the public in a timely manner after the exemption declaration is made. An  
 15 agency may request the office to publish the exemption notice in the periodic bulletin.  
 16 The public's right to judicial proceeding on the lack of an assessment under chapter 343,  
 17 HRS shall commence from the date the public is notified of the exemption through the  
 18 agency's means or publication in the bulletin, whichever of the two is earliest.<sup>130</sup>
- 19 (fh) In the event the governor declares a state of emergency pursuant to chapter 127A, HRS,  
 20 ~~131 the governor may exempt any affected program or action from complying with this~~  
 21 ~~chapter, has authority to suspend laws, including chapter 343, HRS. In such an event,~~  
 22 ~~no exemption declaration is required and the proposing agency or approving agency~~

23 <sup>126</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not  
 24 received council concurrence within the past five years. The five years concurrence threshold is an  
 25 incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation  
 26 so that agencies can continue to use the list but with a higher burden of due diligence.

27 <sup>127</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several  
 28 exemption types.

29 <sup>128</sup> Housekeeping.

30 <sup>129</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these  
 31 as a record.

32 <sup>130</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or  
 33 through their own means. Some agencies already do this by posting them to their website in a  
 34 spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a  
 35 determination and how the public is supposed to know, so that everyone has a clear date for when legal  
 36 challenge begins and ends, without making the disclosure process overly burdensome to agencies or  
 37 OEQC.

38 <sup>131</sup> States the name of the statute for emergency proclamations.

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1 shall file an exemption notice in its records that the emergency action was undertaken  
2 pursuant to a specific emergency proclamation.<sup>132</sup>

3 (i) An emergency action that is not initiated within the period of the governor's emergency  
4 proclamation shall no longer be considered an emergency action and therefore shall be  
5 subject to chapter 343, HRS.<sup>133</sup>

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

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7 <sup>132</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that  
8 the agency has a responsibility to record that the action occurred during a specific emergency  
9 proclamation in case a question arises about the lack of an assessment.

10 <sup>133</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not  
11 start during the emergency proclamation from being covered by the emergency proclamation.

HONOLULU FIRE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

636 South Street  
Honolulu, Hawaii 96813-5007  
Phone: 808-723-7139 Fax: 808-723-7111 Internet: www.honolulu.gov/hfd

KIRK CALDWELL  
MAYOR



MANUEL P. NEVES  
FIRE CHIEF

LIONEL CAMARA JR.  
DEPUTY FIRE CHIEF

September 7, 2017

RECEIVED  
17 SEP 13 08:41  
OFFICE OF ENVIRONMENTAL  
QUALITY CONTROL

Mr. Joseph Shacat  
Chairperson  
State Environmental Council  
Department of Health  
State of Hawaii  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Dear Mr. Shacat:

Subject: Hawaii Administrative Rules Chapter 11-200 Version 0.1  
Establishing Procedures, Content Requirements, Criteria and Definitions for  
Applying Hawaii Revised Statutes Chapter 343; the Environmental Impact  
Statement Law

In response to your letter dated August 15, 2017, regarding the abovementioned  
subject, the Honolulu Fire Department determined that there will be no significant  
impact to fire department services.

Should you have questions, please contact Battalion Chief Wayne Masuda of our Fire  
Prevention Bureau at 723-7151 or wmasuda@honolulu.gov.

Sincerely,

SOCRATES D. BRATAKOS  
Assistant Chief

SDB/WM:bh

18-157





**UNIVERSITY  
of HAWAII**  
SYSTEM

Office of the Vice President for Legal Affairs and  
University General Counsel

September 8, 2017

Via E-Mail ([oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov))

Department of Health, State of Hawaii  
State Environmental Council  
Attention: Director Scott Glenn  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

**RE: Proposed Amendment and Compilation of Chapter 11-200,  
Hawaii Administrative Rules ("HAR")**

Dear Director Glenn and Members of the State Environmental Council (the "Council" or "EC"):

This letter is in response to the letter, dated August 15, 2017, from Joseph Shacat, Chairperson of the Council to David Lassner, President of the University of Hawaii (the "University"), in which the Council invites the University to comment on its proposed amendments to HAR Chapter 11-200 (the "Rule Changes"), specifically to baseline draft Version 0.1. We appreciate the opportunity to comment on the Rule Changes prior to the Council holding public hearings.

We understand that the EC issued a revised version of the Rule Changes (Version 0.2) on or about September 5, 2017. The University submits the following preliminary comments to Version 0.2 of the Rules Changes, with the understanding that the University might submit additional comments after we have had more of an opportunity to review Version 0.2 of the Rule Changes:

**1. UH designated as accepting/approving authority.** For agency actions, the Governor is designated as the accepting authority. For applicant actions, the approving agency is also the accepting authority. Please confirm that the University is the approving/accepting authority for applicant actions that involve the use of University lands or University funding. See HAR § 11-200-4 (Identification of Approving Agency and Accepting Authority) and HAR § 11-200-23(e) (Acceptability).

**2. Multi-jurisdictional EA, EIS.** If the proposed EA or EIS is multi-jurisdictional and involves lands owned by a state agency, please consider revising the rules to allow the state agency landowner (such as UH) to have the first option to decide whether it will assume the primary or lead role in the preparation of an EA or EIS.

2444 Dole Street, Bachman Hall 110  
Honolulu, Hawaii 96822  
Telephone: (808) 956-2211  
Fax: (808) 956-2109

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3. **Exception for property disposition.** Please clarify in the Rule Changes that the requirement for an EA/EIS is only applicable before a project is to be developed on the site and not before the University is either being granted a property interest or is granting a property interest. In other words, the EA/EIS requirement would apply before the subject property is to be put to a specific use and not when the property interest is being conveyed or transferred (i.e., disposition).

4. **EA, EIS required for use of state lands.** Under HAR § 11-200-5(b), Chapter 343, HRS, applies if the agency is proposing the use of state or county lands or funds. HAR § 11-200-5(c) defines the use of state or county lands as any use (title, lease, permit, easement, licenses, etc.). HAR § 11-200-5(c) should be revised to clarify the “use” of state lands:

“Use of state or county funds shall include any form of funding assistance flowing from the state or a county, and use of state or county lands includes any use (development or construction of a project within or upon such lands) or entitlement to those lands.”

This would help confirm that Chapter 343, HRS, was not intended to apply before the University or any other state agency or board approves the disposition, acceptance, conveyance, or transfer of an interest in state or county lands. Without such deletion or a provision clarifying that neither an EA or EIS would be required for an agency’s disposition, acceptance, conveyance, or transfer of an interest in state or county lands, a state agency (such as the University) may be required to prepare an EA or EIS before agreeing to the transfer of ownership of state or county land between agencies. A change in the agency responsible for managing and overseeing the property, in and of itself, should not trigger a requirement to prepare an EA or EIS. Our understanding is that the State would not treat the transfer of ownership of state land between state agencies (considered to be more like a change in management) to constitute a “use” of state land that would trigger the need to prepare an EA or EIS. Similarly, if the University is conveying or granting any interest in University land, this would not be considered a “use” of state land and the grantee would not be required to prepare an EA or EIS until the grantee planned to build or construct a project upon the land.

5. **Planning studies exemption.** HAR § 11-200-5(d) exempts the preparation of planning studies from the requirement to prepare an EA or EIS. To clarify the extent of the exemption, please consider expanding the scope of the exemption by revising it to read as follows: “For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects that the agency has not approved, adopted, and [øf] funded.” See also HAR § 11-200-6(b)(3)(B) where the same change should be made.

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6. **Actions with no published exemption notice may still be challenged.** Under HAR § 11-200-8(g), actions with no published exemption notice may still be subject to the public's right to a judicial proceeding on the lack of an assessment. Further, such a challenge must be initiated "within one hundred and twenty days of the agency's decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is later." It would be better to set a definitive time period for the challenge, such as 120 days from the date the notice of the agency's decision not to prepare or require the preparation of an EA is published in the OEQC bulletin. To implement this, please consider revising HAR § 11-200-8(g) to read as follows: "Actions with the no published exemption notice may still be subject to the public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS and shall be initiated within one hundred ~~and~~ twenty days of the date that the notice of the agency's decision not to prepare an EA is published in the periodic bulletin."

7. **Emergencies.** The existing EC rules expressly allow the Governor, in declaring a state of emergency, to exempt any affected program or action from complying with HRS Chapter 343. In a prior version of the Rule Changes (Version 0.1): (a) the Governor would have been required to declare the state of emergency pursuant to chapter 127A, HRS, (b) the Governor would have had the general authority to suspend laws, including chapter 343, HRS, rather than having the specific authority to exempt programs or actions from chapter 343, HRS, and (c) the proposing agency or approving agency would not be required to issue an exemption declaration or publish an exemption notice. For reasons that are not clear, the latest version of the Rule Changes (version 0.2) deleted the entire emergency provision. This emergency provision should be restored and revised to read as follows:

"In the event the governor declares a state of emergency, the governor has the authority to suspend laws, including chapter 343, HRS, and may exempt any proposed or affected program or action from complying with chapter 343, HRS. In such event: (a) no exemption declaration is required and no exemption notice need be published, (b) the proposing agency or approving agency shall file an exemption notice in its records that the exemption was granted pursuant to or under the governor's emergency proclamation, and (c) such exemption notice and any exemption granted for any proposed or affected program or action pursuant to or under the governor's emergency proclamation shall not be subject to appeal or challenge."

8. **Time limits for issuance of EISPNS.** Please consider revising the first sentence in HAR § 11-200-9(a)(9) to read as follows:

"As appropriate, issue either a FONSI within thirty days of the filing of the final EA or an EISPNS as early as possible after a determination is made, all pursuant to the requirements of section 11-200-11.2."

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See also HAR § 11-200-11.1(b) which indicates that the proposing or approving agency shall file the notice and supporting EA “as early as possible after a determination is made.”

**9. Significance criteria – Conflict with other laws or court decisions.** The scope of actions that could be deemed to have a significant effect on the environment seems to have expanded. According to the revised HAR § 11-200-12(b)(3) and HAR § 11-200-11-12(b)(4), an action will, in most instances, be determined to have a significant effect on the environment if it conflicts with any laws (used to be limited to conflicts with environmental policies, goals or objectives as expressed in HRS chapter 343) or court decisions (court decisions themselves can be inconsistent (e.g., between state circuits) and some court decisions are then addressed by the enactment of new or modified laws; in addition, it is unclear who makes the determination as to whether it is in conflict or what standards apply in making such determination) or has a “substantial adverse effect” on the cultural practices of the community or the state. One concern is that “cultural practices” are not defined and are necessarily limited to Native Hawaiian cultural practices. Please consider revising HAR § 11-200-12(b)(3) to delete the phrases “or other laws” and “court decisions.”

**10. Resource plans.** HAR § 11-200-17(h) was revised to include “resource plans” in addition to “land plans.” It is not clear in this context what is meant by the term “resource plans.” This needs to be more clearly defined. Perhaps it relates to prior Rule Changes that refer to an “irrevocable commitment of resources” (see HAR § 11-200-12(b)(1) and HAR § 11-200-17(k)), which defines “resources” as “natural and cultural resources irreversibly and irretrievably committed to the action and not only to the labor and materials committed to the action”). If “resource plans” are supposed to refer to natural and cultural resources, the concern is that the effort to identify and locate such resource plans for a particular area will likely extend the time needed to prepare an EIS.

**11. Appeals of non-acceptance determinations.** Under HAR § 11-200-24, non-acceptance determinations may be appealed to the EC. While the EC is obligated to make a decision in 60 days after receiving the notice of the appeal, the 60-day time period (under versions 0.1 and 0.2 of the proposed Rule Changes) does not start running until the day of the EC meeting to consider the appeal. This could significantly extend the time deadline for EC’s decision on the appeal. Please consider revising the third sentence in HAR § 11-200-24 to read as follows: “The council shall be deemed to have received the appeal on the date that the office receives the appeal notice.”

**12. Supplemental EIS.** HAR § 11-200-27 (Supplemental EIS; Determination of Applicability) requires that a supplemental EIS be prepared if 5 years has passed since the EIS was accepted and the project or program has not substantially commenced. In addition, a supplemental EIS is warranted if: (a) scope of the action has been substantially increased,

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(b) the intensity of the environmental impacts will be increased, (c) mitigation measures, as originally planned, will not be implemented, or (d) “new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.” Given the time needed to obtain all of the required governmental approvals (particularly those involving discretionary approvals subject to contested case hearings), arrange the necessary financing, and complete the planning and design process, the 5-year effective period of an EIS would seem to be inadequate. Please consider extending the effective period of an EIS to at least 15-20 years.

13. **Captions, titles.** It will be easier to read and understand the Rule Changes if each subsection was given a short title or caption (see HAR § 11-200-17 (Content Requirements; Draft Environmental Impact Statement)).

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact us at 956-2211 or [bymatsui@hawaii.edu](mailto:bymatsui@hawaii.edu).

Very truly yours,



Carrie K. S. Okinaga, Esq.  
Bruce Y. Matsui, Esq.  
Office of the Vice President for Legal Affairs  
and University General Counsel

cc: David Lassner, President, University of Hawaii  
Jan Gouveia, Vice President for Administration  
Kalbert Young, Vice President for Budget & Finance/CFO



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

September 8, 2017

Mr. Scott Glenn, Director  
Office of Environmental Quality Control, Hawaii Department of Health  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

SUBJECT: Hawaii State Energy Office Comments on the Proposed Draft Hawaii  
Administrative Rules, Chapter 11-200, for Chapter 343, Hawaii Revised Statutes

Dear Mr. Glenn,

Thank you and the Environmental Council for providing the Hawaii State Energy Office (HSEO) an opportunity to comment on the proposed draft Hawaii Administrative Rules (HAR), Chapter 11-200, implementing the environmental review process set forth in Chapter 343, Hawaii Revised Statutes (HRS). HSEO's comments are focused on the application of the draft HAR to the projects and initiatives that may be proposed to help Hawaii achieve its ambitious statutory goal of 100% renewable energy in the electricity sector by 2045<sup>1</sup>. Successfully reaching this goal with acceptable impacts to Hawaii's communities and environment requires an environmental review process that contemplates all types of renewable energy projects and provides opportunity for public participation early in and throughout the scoping process.

In addition to maximizing rooftop solar, numerous utility-scale renewable energy projects of various technologies are needed to displace Hawaii's existing fossil fuel power plants, which currently provide nearly 70% of Hawaii's electricity needs<sup>2</sup> yet pose a significant threat to our local and global environment. While generally considered "cleaner" than fossil fuel alternatives, most utility-scale renewable energy projects have environmental impacts warranting thorough review. HSEO's comments seek to clarify the types of renewable energy projects that would be subject to Chapter 343 review under the new HAR and highlight areas that may warrant further evaluation concerning renewable energy projects.

<sup>1</sup> Act 97 (2015).

<sup>2</sup> According to HSEO's *Hawaii Energy Facts & Figures* (May 2017), approximately 26.6% of all electricity sold by Hawaii's electric utilities came from renewable energy sources in 2016 ([https://energy.hawaii.gov/wp-content/uploads/2011/10/HSEOFactsFigures\\_May2017\\_2.pdf](https://energy.hawaii.gov/wp-content/uploads/2011/10/HSEOFactsFigures_May2017_2.pdf)).



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### **Definitions and Terminology (§11-200-2)**

HSEO suggests a definition should be considered for “Oil refinery,” which is one of five facility triggers or “proposal elements” under section §11-200-6(b). This trigger was created in 2004 along with four other facility triggers to “close loopholes in the environmental review process,<sup>3</sup>” but without definition it’s unclear if “oil refinery” under Chapter 343 applies to biofuel refineries and biofuel production facilities.

While project specifics and the surrounding environment dictate actual project impacts, the Hawaii Clean Energy Final Programmatic Environmental Impact Statement identifies potential environmental impacts from the cultivation, development, and utilization of biofuels.<sup>4</sup> However, it may not be appropriate to expand the definition of “oil refinery” under the HAR to include biofuel refineries without legislative process and without clearly encompassing biofuel feedstock cultivation and production, which can have the greatest environmental impacts along the biofuel supply chain.<sup>5</sup> In addition, biofuel refineries can have positive environmental impacts by receiving and processing waste streams that would otherwise require disposal. Accordingly, HSEO suggests consideration of a definition of “oil refinery” that is consistent with the definition of “refinery” under current Hawaii law:<sup>6</sup>

"Oil refinery" means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

### **Multiple or Phased Applicant or Agency Actions (§11-200-7)**

HSEO suggests that the section on Multiple or Phased Applicant or Agency Actions (§11-200-7) should clarify when, if at all, a Supplemental Environmental Impact Statement would be appropriate for phased actions; particularly, when the individual precedent project(s) or action(s) itself triggers Chapter 343 review.

### **Exemption Notices (§11-200-8)**

<sup>3</sup> Act 55, Session Laws of Hawaii (2004). The definition of “Power-generating facility” was amended by the Conference Committee to require that the facility to be fueled by fossil fuels, but no other discussion of these new triggers was found in the 2004 legislative reports. House Bill 1249 (2003) Conference Committee Rep. No. 10-04, Stand. Com. Rep. No. 1349, and Stand. Com. Rep. 574.

<sup>4</sup> U.S. Department of Energy, Hawaii Clean Energy Final Programmatic Environmental Impact Statement (PEIS), Section 7.1 (September 2015) <http://energy.hawaii.gov/testbeds-initiatives/hawaii-clean-energy-peis/peis-documents>

<sup>5</sup> U.S. Environmental Protection Agency, Biofuels and the Environment: First Triennial Report to Congress, Executive Summary (December 2011) [https://ofmpub.epa.gov/eims/eimscomm.getfile?p\\_download\\_id=506091](https://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=506091)

<sup>6</sup> Under H.R.S. §486J-1 (Definitions; Petroleum Industry Information Reporting), “Refinery” means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

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HSEO suggests that the section on Exemption Notices (§11-200-8) should provide additional guidance and/or define the term “minimal or no significant impacts” to clarify the actions that are, or are not, eligible for an exemption. Additional guidance would support agencies in their exemption determinations.

**Significance Criteria (§11-200-12)**

Some large renewable energy projects or appurtenances (e.g., wind farms, smokestacks, communications towers), may require lighting at night for aviation safety under Federal Aviation Administration or other regulations, which can impact scenic vistas and viewplanes. HSEO offers the following amendment for consideration:

- (12) Substantially affects, during day or night, the scenic vistas and viewplanes identified in county or state plans or studies; or,

**Areas That May Warrant Further Evaluation Concerning Renewable Energy Projects**

HSEO would like to take this opportunity to highlight that Chapter 343 review is currently not expressly required for certain types of large renewable energy projects that do not fall under one of the seven geographical categories or the five proposal elements, which could include large wind and solar farms, geothermal power plants, hydropower plants, biofuel or biogas refineries, or bioenergy, biogas, and biomass power plants that are privately owned and/or are sited on private lands. Given the complexities concerning the potential positive and negative impacts from large-scale renewable energy projects, thorough discussion, evaluation, and legislative process may be warranted to determine the appropriate level of environmental review for large renewable energy projects.

Thank you for your consideration of this request. Please contact me directly at (808) 587-3812 or [carilyn.shon@hawaii.gov](mailto:carilyn.shon@hawaii.gov) should you have any questions.

Sincerely,



Carilyn O. Shon  
Energy Program Administrator



09.18.17

James Buika  
County of Maui Planner  
2200 Main Street #630  
Wailuku HI 96793  
[James.buika@mauicounty.gov](mailto:James.buika@mauicounty.gov)

Joseph Shacat, Chairperson  
State Environmental Council  
Department of Health  
State of Hawaii 235 South Beretania Street, Suite 702  
Honolulu, HI

Dear Joseph Shacat,

Thank you for this opportunity to comment on your request dated August 15, 2017 from the Environmental Council. If possible, please add these important comments for consideration during the EIS pre-rulemaking stakeholder engagement phase.

Below are four experiential observations with suggested improvements to EIS process:

- 1) From my experience, there has been continuous confusion through years about what is an EA and what is an EIS, in terms of content -- this undefined discrepancy between an EA and an EIS has resulted in many lawsuits. To lessen this discrepancy, the rules must set very clear expectations to create transparency between applicant and the public.
  - a. Clearly define what an EA is, in terms of content, to include a prescriptive detailed chapter-by-chapter, with subchapter Table-of-Content listings, of the content expected for an EA -- formalize the content and format so that it is always consistent and transparent. The point being that every EA should start with a common TOC listing -- variations should be based on this standard chapter outline.
  - b. Similarly, define the difference between an EA document and an EIS in terms of detailed content, chapter by chapter. Clearly define any other differences between an EA and EIS.
- 2) There is a major difference between an onshore EA and a shoreline EA/EIS in terms of required studies and content.
  - a. Define EA and EIS content requirements in a similar manner for shoreline multi-jurisdictional projects that involve near shore and off shore impacts.
- 3) Moreover, under current rules, lawsuits are also often filed because significant impacts and cumulative impacts are in the "eyes of the beholder."
  - a. Clearly define how to calculate significant impact for various subjects within an EA. Provide guidance on acceptable mitigation remedies.
  - b. Clearly define how to calculate cumulative impact for various subjects and impact categories.
- 4) Environmental impacts can be categorized into four sectors: ecological, economic, political, and social. Social impacts are becoming more prevalent and dominant for large projects.
  - a. Fully define categories of social impacts that should be studied and defined, as well as acceptable mitigation remedies.

Sincerely

James Buika

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Working Draft of Proposed Revisions to Hawai'i  
2 Administrative Rules Title 11 Department of Health  
3 Chapter 200 Environmental Impact Statement Rules  
4 **Version 0.2 September 5, 2017**

5  
6 Prepared with the assistance of the Office of Environmental Quality Control (OEQC).

7  
8 Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council  
9 (EC) members and the general public.

10  
11 **Background**

12 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter  
13 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled  
14 in 1996. An amendment to add an exemption class for the acquisition of land for affordable  
15 housing was added in 2007, although it has not been compiled with the rest of the rules.

16  
17 On July 27, 2017, the EC Permitted Interaction Group submitted [Version 0.1](#) to the EC for its  
18 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional  
19 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline  
20 document and to serve as a foundation for consulting with affected agencies and the general  
21 public. The EC approval concluded the work of the Permitted Interaction Group.

22  
23 Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version  
24 0.3 in October 2017 that could potentially become the proposed draft for which it conducts  
25 formal public hearings to adopt into rules.

26  
27 **How to Read Version 0.2**

28 Versions 0.1 and 0.2 use a "Ramseyer-lite" style of formatting to indicate proposed changes to  
29 HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules.  
30 Text with a strikethrough is language proposed for removal from the rules. A footnote  
31 accompanies the proposed change to provide context.

32  
33 In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes  
34 made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as  
35 well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version  
36 0.2 may have multiple footnotes following a given change. These footnotes are separated by a  
37 forward slash ("/") to help distinguish the different footnotes.

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## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 Major Topics Addressed in Version 0.2**

2 Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In  
3 addition to the numerous revisions to modernize grammar and enhance readability  
4 (“housekeeping”), the following major topics are addressed in Version 0.2:

- 5 ● Clarifying definitions and aligning them with statutory definitions.
- 6 ● Incorporating cultural practices in accordance with Act 50 (2000).
- 7 ● Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e.,  
8 *The Environmental Notice*).
- 9 ● Aligning the “triggers” requiring environmental review for agencies and applicants with  
10 statutory language.
- 11 ● Clarifying the environmental review process as it applies to states of emergency and  
12 emergency actions.
- 13 ● Clarifying roles and responsibilities of proposing agencies and approving agencies in the  
14 environmental review process.
- 15 ● Revising the requirements and procedures for creating exemption lists and exempting  
16 actions from further environmental review.
- 17 ● Modernizing submittals, deadlines, comment and response, and distribution to recognize  
18 electronic communication.
- 19 ● Revising the comment and response requirements and procedures for environmental  
20 assessments (EAs) and environmental impact statements (EISs).
- 21 ● Clarifying style standards for EAs and EISs, including when an action is a program or a  
22 project.
- 23 ● Clarifying significance criteria thresholds for determining whether to issue an exemption  
24 notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- 25 ● Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- 26 ● Revising requirements for conducting scoping meetings following an EISPN.
- 27 ● Clarifying content requirements for Draft and Final EISs.
- 28 ● Revising procedures for appealing non-acceptance to the EC.
- 29 ● Revising procedures for joint federal-state environmental review.
- 30 ● Revising the requirements and procedures for determining when to do a Supplemental  
31 EIS, including aligning the requirements with statute and case law.
- 32 ● Adding a retroactivity section for actions that have already completed environmental  
33 review or are undergoing review at the time the rules would be enacted.

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## Environmental Council

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Environmental Council

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

1 **HAR Chapter 11-200 Environmental Impact**  
2 **Statement Rules**

3 Subchapter 1 Purpose

4 **§11-200-1 Purpose**

5 Chapter 343, Hawaii Revised Statutes, (HRS)<sup>1</sup>, establishes a system of environmental review at  
6 the state and county levels ~~which~~ that<sup>2</sup> shall ensure that environmental concerns are given  
7 appropriate consideration in decision making along with economic and technical considerations.  
8 The purpose of this chapter is to provide agencies and persons with procedures, specifications  
9 of regarding the<sup>3</sup> contents of environmental assessments and environmental impact statements,  
10 and criteria and definitions of statewide application.

11  
12 Environmental assessments and environmental impact statements are meaningless without the  
13 conscientious application of the environmental review process as a whole, and shall not be  
14 merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies  
15 and applicants shall ensure that EAs and EISs are prepared at the earliest opportunity in the  
16 planning and decision-making process. This shall assure an early open forum for discussion of  
17 adverse effects and available alternatives, and that the decision-makers will be enlightened to  
18 any environmental consequences of the proposed action prior to decision making<sup>4, 5</sup>

19  
20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-1, 343-6)

21  
22  
23

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<sup>1</sup> Housekeeping.

<sup>2</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>3</sup> Increases clarity.

<sup>4</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

<sup>5</sup> Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 2 Definitions and Terminology

2 **§11-200-2 Definitions and Terminology**

3 As used in this chapter:

4  
5 "Acceptance" means a formal determination of acceptability<sup>6</sup> that the document required to be  
6 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental  
7 impact statement (EIS),<sup>7</sup> ~~adequately describes identifiable environmental impacts, and~~  
8 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~  
9 by section 11-200-23.<sup>8</sup> Acceptance does not mean that the action is environmentally sound or  
10 unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
11 determination of acceptance is required prior to implementing or approving the action.  
12

13 "Accepting authority" means the final<sup>9</sup> official who<sup>10</sup> or agency that ~~determines the acceptability~~  
14 of the EIS document makes the determination that a final EIS required to be filed pursuant to  
15 chapter 343, HRS, fulfills the definitions and requirements of an EIS<sup>11</sup>.  
16

17 "Action" means any program or project to be initiated by an agency or applicant.  
18

19 "Addendum" means an attachment to a draft ~~environmental assessment~~ EA<sup>12</sup> or draft  
20 ~~environmental impact statement~~ EIS<sup>13</sup>, prepared at the discretion of the proposing agency, ~~of~~  
21 applicant, or<sup>14</sup> approving agency, and distinct from a supplemental EIS ~~statement~~<sup>15</sup>, for the  
22 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,  
23 or clarifications to information already contained in the draft ~~environmental assessment~~ EA<sup>16</sup> or  
24 the draft ~~environmental impact statement~~ EIS already filed with the office.  
25

<sup>6</sup> Housekeeping. Removes redundant language.

<sup>7</sup> Housekeeping.

<sup>8</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.

<sup>9</sup> Removes "final" because it does not contribute additional meaning to the definition.

<sup>10</sup> Housekeeping.

<sup>11</sup> Clarifies that the role of the accepting authority ~~role is about~~ to determine the acceptability ~~about~~ of a final EIS.

<sup>12</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>13</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>14</sup> Clarifies that the approving agency does not always prepare the EA or EIS.

<sup>15</sup> Removes redundant language. An EIS is by definition a statement.

<sup>16</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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



1 "Agency" means any department, office, board, or commission of the state or county  
2 government ~~which~~ that is part of the executive branch of that government.

3  
4 "Applicant" means any person ~~who~~ that<sup>17</sup>, pursuant to statute, ordinance, or rule, officially  
5 requests approval from an agency for a proposed action.

6  
7 "Approval" means a discretionary consent required from an agency prior to ~~actual~~<sup>18</sup>  
8 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~  
9 ~~recommendation from an agency for which judgment and free will may be exercised by the~~  
10 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~  
11 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~  
12 ~~by law or rule without the use of judgment or discretion.~~<sup>19</sup>

13  
14 "Approving agency" means an agency that issues an approval prior to ~~actual~~<sup>20</sup> implementation  
15 of an applicant<sup>21</sup> action, determines the need for an EA or EIS, and issues the exemption,  
16 FONSI, or acceptance determination.<sup>22</sup> The approving agency may be is also the<sup>23</sup> accepting  
17 authority for an applicant final EIS.<sup>24</sup>

18  
19 "Concurrence" means the discretionary consent of the council to an agency exemption list.<sup>25</sup>

20  
21 "Council" or "EC" means the environmental council.

22  
23 "Cumulative impact" means the impact on the environment ~~which~~ that results from the  
24 incremental impact of the action when added to other past, present, and reasonably foreseeable  
25 future actions regardless of what agency or person undertakes such other actions. Cumulative  
26 impacts can result from individually minor but collectively significant actions taking place over a  
27 period of time.

17 Stylistic change because a "person" as defined by the rules is not always a human.

18 Does not add meaning to sentence so removing the word.

19 Remove Removes "discretionary consent" from the definition and made makes it a standalone definition that mirrors the statute.

20 Does not add meaning to sentence so removing the word.

21 Approving agencies are only in the case of applicants.

22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

23 Clarifies that the approving authority is always the accepting authority for applicants.

24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

25 Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is not an approval because it does not apply to a specific ~~project~~ action.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 "Discretionary consent" means a consent, sanction, or recommendation from an agency for  
 2 which judgment and free will may be exercised by the issuing agency, as distinguished from a  
 3 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an  
 4 agency upon a given set of facts, as prescribed by law or rule without the use of judgment or  
 5 discretion.<sup>26</sup>

6  
 7 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a  
 8 proposing agency or an approving agency for public review and comment when that agency  
 9 anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)<sup>27</sup> determination.

10  
 11 "Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological  
 12 effects (such as the effects on natural resources and on the components, structures, and  
 13 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic  
 14 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate  
 15 or delayed<sup>28</sup>. Effects may also include those effects resulting from actions ~~which~~ that may have  
 16 both beneficial and detrimental effects, even if on balance the agency believes that the effect  
 17 will be beneficial.

18  
 19 "EIS public scoping meeting" means a meeting open to the public held by the proposing agency  
 20 or applicant, or their representative, within the thirty-day public consultation period described in  
 21 section 11-200-15, ~~inviting that invites~~ the participation of those agencies, citizen groups, and  
 22 individuals reasonably believed to be potentially affected by the proposed action (including  
 23 those who might not be in accord with the proposed action), to assist the preparing party in  
 24 determining the range of actions, alternatives, impacts, and proposed mitigation measures to be  
 25 considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.  
 26 Suggestions made at the EIS public scoping meeting are considered to be advisory and not  
 27 mandatory.<sup>29</sup>

28  
 29 "Emergency action" means an action to prevent or mitigate loss or damage to life, health,  
 30 property, or essential public services in response to a sudden unexpected occurrence  
 31 demanding such immediate action. ~~a project or program that normally would be subject to~~  
 32 chapter 343, HRS, but is not because of a state of emergency declared by the governor.<sup>30/31</sup>

<sup>26</sup> Definition removed from "approval" and made standalone. Mirrors HRS § section 343-2, HRS,  
 language and expands on ministerial definition (which is existing language in HAR § section 11-200-2).

<sup>27</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
 housekeeping purposes, unless otherwise noted.

<sup>28</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

<sup>29</sup> Removes language unnecessary to the definition of "EIS public scoping meeting" that creates doubts  
about the value of participating in the the EIS scoping meeting process.

<sup>30</sup> Redefines an emergency action to be an action undertaken during a particular emergency proclamation  
issued by the governor.

<sup>31</sup> Re-inserting language that was deleted in v0.1 and moving distinction between actions taken in  
response to an emergency without a governor's proclamation of a state of emergency and actions taken  
during a governor proclaimed state of emergency in section 11-200-5, Agency Actions.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,  
2 and social conditions that exist within the area affected by a proposed action, including land,  
3 human and animal communities, **health**,<sup>32</sup> air, water, minerals, flora, fauna, ambient noise, and  
4 objects of historic, cultural,<sup>33</sup> or aesthetic significance.

5  
6 "Environmental assessment" or "EA"<sup>34</sup> means a written evaluation ~~to determine whether an~~  
7 ~~action may have a significant environmental effect. that serves to provide sufficient evidence~~  
8 ~~and analysis to determine whether an action may have a significant environmental effect.~~<sup>35</sup> ~~It~~  
9 ~~together Together~~<sup>36</sup> with a FONSI, **an EA**<sup>37</sup> satisfies chapter 343, HRS, when no EIS is  
10 necessary,<sup>38</sup> and facilitates preparation of an EIS when no **EIS is determined to be**<sup>39</sup> necessary  
11 and the **Chapter 343, HRS, may be satisfied without an EA when,** based on an agency's  
12 judgment and experience, the agency concludes that the proposed action may have a  
13 significant effect on the environment **and therefore proceeds directly to or authorizes an**  
14 **applicant to proceed directly to the preparation of an EIS.**<sup>40</sup>

15  
16 "~~Environmental impact~~" means ~~an effect of any kind, whether immediate or delayed, on any~~  
17 ~~component of the environment.~~<sup>41</sup>

18  
19 "Environmental impact statement,"<sup>42</sup> "statement,"<sup>43</sup> or "EIS" means an informational document  
20 prepared in compliance with chapter 343, HRS, ~~and this chapter and which fully complies with~~  
21 ~~subchapter 7 of this chapter~~<sup>42</sup>. The initial statement EIS<sup>43</sup> filed for public review shall be referred  
22 to as the draft ~~environmental impact statement EIS~~ and shall be distinguished from the final  
23 ~~environmental impact statement EIS~~, which is the document that has incorporated the public's  
24 comments and the responses to those comments. The final ~~environmental impact statement~~  
25 EIS is the document that shall be evaluated for acceptability by the ~~respective~~<sup>44</sup> accepting  
26 authority.

27

<sup>32</sup> Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".

<sup>33</sup> Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).

<sup>34</sup> Adds common abbreviation for use throughout the rules.

<sup>35</sup> Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.

<sup>36</sup> Stylistic change to increase readability.

<sup>37</sup> Stylistic change to increase readability.

<sup>38</sup> Stylistic change to increase readability.

<sup>39</sup> Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).

<sup>40</sup> Clarifies that an EA is not always required prior to beginning preparation of an EIS.

<sup>41</sup> Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.

<sup>42</sup> Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

<sup>43</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>44</sup> Unnecessary language so recommend removing.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "EIS preparation notice,"<sup>45</sup> or "EISPN"<sup>46</sup>, or "preparation notice" means a determination based  
2 on an environmental assessment that the subject that an<sup>47</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement EIS, based on either an EA or an agency's judgment and experience that the  
5 proposed action may have a significant effect on the environment ~~and therefore authorizes the~~  
6 ~~preparation of an EIS without first requiring an EA.~~<sup>48/49/50/51</sup>

7  
8 "Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to  
9 prepare environmental assessments, for a class of actions, based on a determination by the  
10 proposing agency or approving agency that the class of actions will probably have a minimal or  
11 no significant effect on the environment.<sup>52</sup>

12  
13 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a  
14 public government<sup>53</sup> action, or the agency with the power of approval, in the case of a private  
15 action, when it has determined that the proposed project is an exempt or emergency project  
16 action<sup>54</sup>.

17  
18 "Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by  
19 a proposing agency or an approving agency following the public review and comment period for  
20 the draft ~~environmental assessment~~ EA and in support of either a FONSI or a ~~preparation notice~~  
21 an EISPN<sup>55</sup>, ~~determination; or the environmental assessment submitted by a proposing agency~~  
22 ~~or an approving agency subject to a public consultation period when such an agency clearly~~  
23 ~~determines at the outset that the proposed action may have a significant effect and hence will~~  
24 ~~require the preparation of a statement.~~<sup>56</sup>

---

<sup>45</sup> Housekeeping.

<sup>46</sup> Adds common abbreviation for use throughout the rules.

<sup>47</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>48</sup> Adds the direct-to-EIS pathway to the definition of an EISPN.

<sup>49</sup> Removes unnecessary language describing the process of making an EISPN determination while preserving the meaning of the definition.

<sup>50</sup> Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency's judgment and experience chapter 343-5(e), HRS.

<sup>51</sup> Moved under "E" because EISPN is used more frequently than "preparation notice".

<sup>52</sup> Removes the definition because the concept of "classes of actions" is removed in section 11-200-8.

<sup>53</sup> Global change that clarifies that "public" refers to "government" actions. "Public" is used throughout the regulations to refer to the general citizenry.

<sup>54</sup> Aligns with defined term "emergency action".

<sup>55</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>56</sup> Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency's judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an  
2 EA that an action not otherwise exempt ~~does will~~<sup>57</sup> not have ~~the potential for~~<sup>58</sup> a significant  
3 effect on the environment and therefore does not require the preparation of an EIS. A FONSI is  
4 required prior to implementing or approving the action.<sup>59</sup>

5  
6 "Impacts" means the same as "effects".<sup>60</sup>

7  
8 "Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

9  
10 "National Environmental Policy Act" or "NEPA"<sup>61</sup> means the National Environmental Policy Act  
11 of 1969, Public Law 91-190, 42 U.S.C. § sections 4321-4347, as amended.

12  
13 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
14 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
15 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
16 ~~A negative declaration is required prior to implementing or approving the action.~~<sup>62</sup>

17  
18 "Office" means the office of environmental quality control.

19  
20 "Periodic bulletin" means the document required by section 343-3, HRS, and published by the  
21 office.

22  
23 "Person" includes any individual, partnership, firm, association, trust, estate, private corporation,  
24 or other legal entity other than an agency.

25  
26 "Power generating facility" means:

- 27 1. A new, fossil-fueled, electricity-generating facility, where the electrical output  
28 rating of the new equipment exceeds 5.0 megawatts; or  
29 2. An expansion in generating capacity of an existing, fossil-fueled, electricity-  
30 generating facility, where the incremental electrical output rating of the new  
31 equipment exceeds 5.0 megawatts.<sup>63</sup>

32  
33  
34  
35  

---

<sup>57</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>58</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>59</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>60</sup> Adds a reference for anyone looking up the word "impacts" to direct them to the word "effects".

<sup>61</sup> Adds common abbreviation for use throughout the rules.

<sup>62</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>63</sup> Adds definition from HRS § 343-2.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "~~Preparation notice,~~" or "~~EIS preparation notice,~~"<sup>64</sup> or "~~EISPN~~"<sup>65</sup> means a determination based  
2 on an environmental assessment that the subject ~~that an~~<sup>66</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement ~~EIS, based on either an EA or an agency's judgment and experience that the~~  
5 ~~proposed action may have a significant effect on the environment~~ and therefore authorizes the  
6 ~~preparation of an EIS without first requiring an EA.~~<sup>67</sup>

7  
8 "Primary impact,"<sup>68</sup> or "primary effect,"<sup>68</sup> or "direct impact,"<sup>68</sup> or "direct effect" means effects which  
9 ~~that~~ are caused by the action and occur at the same time and place.

10  
11 ~~A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a~~  
12 ~~number of separate actions in a given geographic area which, if considered singly, may have~~  
13 ~~minor impacts, but if considered together may have significant impacts; (2) a sequence of~~  
14 ~~actions contemplated by a single agency or applicant; (3) separate actions having generic or~~  
15 ~~common impacts; (4) an entire program or plan having wide application or restricting the range~~  
16 ~~of future alternative policies or projects, including new or significant changes to existing land use~~  
17 ~~plans, development plans, zoning regulations, or agency comprehensive resource management~~  
18 ~~plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)~~  
19 ~~implementation of a single project or program over a large geographic area.~~<sup>68/69</sup>

20  
21 "Proposing agency" means any state or county agency that proposes an action under chapter  
22 343, HRS.<sup>70</sup>

23  
24 "Secondary impact,"<sup>71</sup> or "secondary effect,"<sup>71</sup> or "indirect impact,"<sup>71</sup> or "indirect effect" means ~~an~~  
25 ~~effects effect~~ which ~~that is~~ are caused by the action and are later in time or farther removed in  
26 distance, but ~~are is~~ still reasonably foreseeable.<sup>71</sup> ~~Indirect An indirect effects effect~~ may include  
27 ~~a growth-inducing effects effect~~<sup>72</sup> and other effects related to induced changes in the pattern of

<sup>64</sup> Housekeeping.

<sup>65</sup> Adds common abbreviation for use throughout the rules.

<sup>66</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>67</sup> ~~Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".~~

<sup>68</sup> ~~Adds a definition to go along with new sections on how to do environmental review for an action this that is a "program". Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.~~

<sup>69</sup> ~~This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatic EIS", but rather provides more specificity in the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.~~

<sup>70</sup> Added definition because the term is used frequently throughout the rules.

<sup>71</sup> ~~Grammar change to singular to mirror the definition of effect or impact as a singular object.~~

<sup>72</sup> ~~Stylistic change reflect changes made to previous sentence.~~

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 land use, population density or growth rate, and related effects on air, and water,<sup>73</sup> and other  
 2 natural systems, including ecosystems.  
 3  
 4 "Significant effect" or "significant impact" means the sum of effects on the quality of the  
 5 environment, including actions that irrevocably commit a natural resource, curtail the range of  
 6 beneficial uses of the environment, are contrary to the state's State's<sup>74</sup> environmental policies or  
 7 long-term environmental goals and guidelines as established by law, or<sup>75</sup> adversely affect the  
 8 economic welfare,<sup>76</sup> or social welfare, or<sup>77</sup> cultural practices of the community and State,<sup>78</sup> or  
 9 are otherwise set forth in section 11-200-12 of this chapter<sup>79</sup>.  
 10  
 11 "Substantial commencement" means that a an applicant<sup>80</sup> project or program action<sup>81</sup> has  
 12 reached the stage where its last approval<sup>82</sup> has been granted and has advanced to the point  
 13 where financial commitments are in place and scheduled and design is essentially complete, or,  
 14 for government programs an agency action<sup>83</sup> for which an approval is not required, the project  
 15 or program program or project<sup>84</sup> has advanced to the point where financial commitments are in  
 16 place and scheduled and design is essentially complete.<sup>85</sup>  
 17  
 18  
 19  
 20

<sup>73</sup> Housekeeping.

<sup>74</sup> Housekeeping.

<sup>75</sup> Housekeeping.

<sup>76</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>77</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>78</sup> Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added "cultural practices" to the list of adverse effects that could constitute "significance". "Of the community and State" is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of "significant effect".

<sup>79</sup> Housekeeping.

<sup>80</sup> Clarifies the distinction between applicant actions and government actions.

<sup>81</sup> Increases readability.

<sup>82</sup> As defined in section 343-2, HRS, an approval is a discretionary consent.

<sup>83</sup> Removes introduction of new term "government", and replaces with synonym "agency". Further clarifies that this definition applies to both programs and projects.

<sup>84</sup> Global edit changing word order of "project or program" to "program or project" to align with the definition of "action" in section 343-2, HRS.

<sup>85</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law. In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than \$20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Supplemental ~~statement~~ EIS" means an additional environmental impact statement updated  
2 EIS<sup>86</sup> prepared for an action for which ~~a statement~~ an EIS was previously accepted, but which  
3 has yet to progress to substantial commencement and since acceptance the action,  
4 circumstances, or anticipated impacts have<sup>87</sup> changed substantively in size, scope, intensity,  
5 use, location, or timing, among other things.  
6  
7 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.<sup>88</sup>  
8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)  
10  
11

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<sup>86</sup> Housekeeping.

<sup>87</sup> Incorporates substantial commencement into the definition and emphasizes that changes can apply to the proposed action, the environment, or knowledge (ties to supplemental sections).

<sup>88</sup> Adds definition from HRS § section 343-2, HRS.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**


Environmental Council

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

1 Subchapter 3 Periodic Bulletin

2 **§11-200-3 Periodic Bulletin**

3 (a) The office shall inform the public through the publication of a periodic bulletin of the  
4 following:

- 5 (1) Notices filed by agencies<sup>89</sup> of the availability of ~~environmental assessments~~ EAs 
- 6 and appropriate addendum documents for review and comments;
- 7 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or
- 8 not required;
- 9 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and
- 10 appropriate addendum documents for review and comments;
- 11 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
- 12 (5) Other notices required by the rules of the council.

14 ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin  
15 shall also be sent to the state library system and other depositories or clearinghouses.<sup>90</sup>~~

17 (c <sup>b</sup><sup>91</sup>) The bulletin shall be issued on the eighth and twenty-third days of each month. All  
18 agencies and applicants submitting exemption notices<sup>92</sup>, draft ~~environmental~~  
19 ~~assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNS<sup>93</sup>,  
20 ~~environmental impact statements~~ EISs, acceptance or non-acceptance determinations,  
21 addenda, supplemental ~~statements~~ EISs, supplemental ~~preparation notices~~ EISPNS,  
22 revised documents, withdrawals, and other notices required to be published in the  
23 bulletin shall submit such documents or notices to the office before the close of business  
24 ~~eight~~ four<sup>94</sup> ~~working~~ business<sup>95</sup> days prior to the issue date. In case the deadline falls on  
25 a state holiday or ~~nonworking~~ non-business<sup>96</sup> day, the deadline shall be the next ~~working~~  
26 business<sup>97</sup> day.

<sup>89</sup> Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

<sup>90</sup> This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

<sup>91</sup> Housekeeping. Renumbers paragraphs.

<sup>92</sup> Aligns with section 11-200-8.

<sup>93</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>94</sup> OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

<sup>95</sup> Housekeeping. For computing time see section 1-29, HRS.

<sup>96</sup> Housekeeping.

<sup>97</sup> Housekeeping.



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Environmental Council

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

1 (d c) All submittals to the office for publication in the bulletin shall be accompanied by a  
 2 completed informational form ~~which~~ that provides whatever information the office needs  
 3 to properly notify the public. The information requested may include the following: the  
 4 title of the action; the islands affected by the proposed action; tax map key numbers;  
 5 street addresses; nearest geographical landmarks; latitudinal and longitudinal  
 6 coordinates or other geographic data<sup>98</sup>; applicable permits, including discretionary  
 7 approvals requiring preparation of the document under chapter 343, HRS;<sup>99</sup> whether the  
 8 proposed action is an agency or an applicant action; a citation of the applicable federal  
 9 or state statutes requiring preparation of the document; the type of document prepared;  
 10 the names, addresses and contact persons as applicable of the accepting authority, the  
 11 proposing agency, the approving agency, the applicant, and the consultant; and a brief  
 12 narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey  
 13 the full impact of the proposed action to the public.

14  
 15 (e d) The office may provide recommendations to the agency **or applicant**<sup>100</sup> responsible for  
 16 the ~~environmental assessment EA~~ or EIS regarding any applicable administrative  
 17 content requirements set forth in this chapter.

18  
 19 (f e) The office may, on a space available basis, publish other notices not specifically related  
 20 to chapter 343, HRS.

21  
 22 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,  
 23 343-3, 343-6)

24  
 25  
 26

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<sup>98</sup> Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

<sup>99</sup> Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

<sup>100</sup> **Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.**

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Environmental Council

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


1 Subchapter 4 Responsibilities

2 **§11-200-4 Identification of Approving Agency and<sup>101</sup>**  
3 **Accepting Authority**

4 (a) Whenever an agency proposes an action, the ~~final~~<sup>102</sup> authority to accept ~~a statement an~~  
5 EIS shall rest with:

- 6 (1) The governor, or ~~an~~ the governor's<sup>103</sup> authorized representative, whenever an  
7 action proposes the use of state lands or ~~the use of~~<sup>104</sup> state funds or,<sup>105</sup>  
8 whenever a state agency proposes an action ~~within~~ under<sup>106</sup> section 11-200-6(b);  
9 or
- 10 (2) The mayor, or ~~an~~ the mayor's<sup>107</sup> authorized representative, of the respective  
11 county whenever an action proposes only the use of county lands or county  
12 funds.

13 In the event that an action involves state and county lands, **state and county**<sup>108</sup> funds, or  
14 both **state and county**<sup>109</sup> lands and funds, the governor or the governor's authorized  
15 representative shall have authority to accept the EIS.<sup>110</sup>

16  
17 (b) Whenever an applicant proposes an action, the authority for requiring an EA or<sup>111</sup>   
18 statements EIS, and for making a determination regarding any required EA, and<sup>112</sup>  
19 accepting any required statements EIS that have been prepared shall rest with the  
20 approving<sup>113</sup> agency initially receiving and agreeing that initially received and agreed<sup>114</sup>  
21 to process the request for an approval. With respect to EISs, the approving agency is  
22 also called the accepting authority.<sup>115</sup>

101 Expand the content of this section to also identify the agency with responsibility in cases of EAs.

102 Removes the word "final" because it does not add to the meaning of the sentence **anymore**.

103 Housekeeping.

104 Housekeeping.

105 Housekeeping.

106 Housekeeping.

107 Housekeeping.

108 **Makes clear that "state and county" funds are meant.**

109 **Makes clear that "state and county" lands and funds are meant.**

110 Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.

111 Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

112 Adds EAs to the identification of which agency has responsibility. Language is phrased **d** so that the agency can make a FONSI or EISPN determination.

113 Housekeeping. Clarifies **that** the **agency** is called the **approving agency**.

114 Housekeeping.

115 Clarifies that **the** approving agency is the accepting authority for applicants.

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Environmental Council

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

1  
 2 (c)<sup>116</sup> In the event that ~~there is~~<sup>117</sup> more than one agency ~~that is proposing the action or~~  
 3 ~~in the case of applicants,~~<sup>118</sup> ~~more than one agency~~<sup>119</sup> has jurisdiction over the action,  
 4 and these agencies are unable to agree as to which agency has the responsibility for  
 5 complying with ~~section 343-5(e)~~ chapter 343<sup>120</sup>, HRS, the office, after consultation with  
 6 the agencies involved, shall determine which agency is responsible for compliance<sup>121</sup>. In  
 7 making the determination, the office shall ~~take into consideration, including, but not~~  
 8 ~~limited to, the following factors~~ consider<sup>122</sup>:

- 9 (1) The agency with the greatest responsibility for supervising or approving the
- 10 action as a whole;
- 11 (2) The agency that can most adequately fulfill the requirements of chapter 343,
- 12 HRS, and this chapter;
- 13 (3) The agency that has special expertise or greatest<sup>123</sup> access to information
- 14 relevant to the action's implementation and impacts<sup>124</sup>; and
- 15 (4) The extent of participation of each agency in the action.

16  
 17 (d) The office shall not serve as the accepting authority for any proposed agency or  
 18 applicant action.<sup>125</sup>

19  
 20 [Eff 12/6/85; am and Comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

21  
 22

---

<sup>116</sup> Creates new paragraph to clarify that OEQC can make this determination for applicants and for agencies when they are unable to agree on who is the proposing agency or approving agency. The paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when multiple agencies want the responsibility.

<sup>117</sup> Stylistic change to increase readability.

<sup>118</sup> Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

<sup>119</sup> Stylistic change to increase readability.

<sup>120</sup> Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

<sup>121</sup> Stylistic change to increase readability.

<sup>122</sup> Housekeeping.

<sup>123</sup> Helps to distinguish among agencies - all agencies have access to information.

<sup>124</sup> Clarifies what kind of information is meant.

<sup>125</sup> Clarifies that OEQC may not serve as the accepting authority, as per chapter 343, HRS.

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Environmental Council

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

1 Subchapter 5 Applicability

2 **§11-200-5 Agency Actions**

- 3 (a) For all **proposed**<sup>126</sup> **agency**<sup>127</sup> actions ~~which that~~ are not exempt,<sup>128</sup> as defined in section  
4 11-200-8, the proposing<sup>129</sup> agency shall assess at the earliest practicable time the  
5 significance of potential impacts of ~~its actions~~ the **proposed agency's**<sup>130</sup> action<sup>131</sup>,  
6 including the overall, cumulative impact in light of related past, present, and reasonably  
7 foreseeable<sup>132</sup> actions in the region area affected<sup>133</sup> ~~and further actions contemplated.~~<sup>134</sup>  
8
- 9 (b) The applicability of chapter 343, HRS, to specific agency **proposed** actions is  
10 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~  
11 ~~when an agency proposes to implement an action to use state or county lands or funds,~~  
12 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~<sup>135</sup>  
13
- 14 (c) Use of state or county funds shall include any form of funding assistance flowing from  
15 the State or a<sup>136</sup> county, and use of state or county lands includes any use (title, lease,  
16 permit, easement, licenses, etc.) or entitlement to those lands.  
17
- 18 (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or  
19 planning study for possible future programs or projects ~~which that~~ the agency has not  
20 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a  
21 proposal, it shall consider environmental factors and available alternatives and disclose  
22 these in any future assessment EA or subsequent statement EIS. ~~If, however,~~<sup>137</sup> the  
23 planning and feasibility studies involve testing or other actions ~~which that~~ may have a  
24 significant impact on the environment, ~~then~~<sup>138</sup> an environmental assessment EA or  
25 EIS<sup>139</sup> shall be prepared.

<sup>126</sup> Global change removing "proposed" before or modifying "action" unless "proposed" is necessary within the context of the sentence or provision to provide clarity.

<sup>127</sup> Housekeeping.

<sup>128</sup> Housekeeping.

<sup>129</sup> Housekeeping.

<sup>130</sup> Housekeeping. Removed words to eliminate redundancy.

<sup>131</sup> Housekeeping.

<sup>132</sup> Clarifies what is considered as part of a cumulative look impact analysis. Language is drawn from NEPA, 40 CFR 1508.7.

<sup>133</sup> Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

<sup>134</sup> Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

<sup>135</sup> Housekeeping. Redundant language.

<sup>136</sup> Housekeeping.

<sup>137</sup> Housekeeping.

<sup>138</sup> Housekeeping.

<sup>139</sup> Acknowledges direct-to-EIS pathway.

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## Environmental Council

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

1  
2 (e) Any amendment to existing county general plans, however denominated, which may  
3 include ~~but not be limited to~~ development plans,<sup>140</sup> or community plans, where the  
4 amendment would result in designations other than agriculture, conservation, or  
5 preservation,<sup>141</sup> requires an environmental assessment EA or EIS<sup>142</sup>. (Actions by a  
6 county initiating a comprehensive review toward effectuating either a general plan or  
7 amendment thereof may be excepted. General plan amendments requested by a private  
8 owner or developer outside of the comprehensive review process are not excepted.)  
9

10 (f) In the event that the governor declares a state of emergency pursuant to chapter  
11 127A, HRS,<sup>143</sup> the governor has authority to suspend laws, including chapter 343, HRS.  
12 In such an event, the proposing agency shall file an exemption notice in its records that  
13 the emergency action was undertaken pursuant to a specific emergency proclamation.<sup>144</sup>  
14 If the emergency action has not substantially commenced within sixty days of the  
15 emergency proclamation, the action will be subject to chapter 343, HRS.<sup>145</sup>  
16

17 (g) In the event of a sudden unexpected emergency causing or likely to cause loss  
18 or damage to life, health, property, or essential public service, but for which a declaration  
19 of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency  
20 may undertake an emergency action without conducting environmental review under  
21 chapter 343. An emergency action undertaken without environmental review may still be  
22 subject to the public's right to a judicial proceeding on the lack of an assessment,  
23 pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days  
24 of the agency's decision to carry out the action or from the date the public becomes  
25 aware of the action, whichever is later.<sup>146</sup>  
26

27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(b),  
28 343-6)

---

<sup>140</sup> Housekeeping.

<sup>141</sup> Housekeeping.

<sup>142</sup> Direct-to-EIS is also an option.

<sup>143</sup> States the name of the statute for emergency proclamations.

<sup>144</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>145</sup> Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count.

<sup>146</sup> Provides an avenue for agencies to undertake emergency actions (e.g., cutting a firebreak) absent a governor declared state of emergency and provides safeguards to avoid abuse, including clearly defined circumstances in which the emergency action may be initiated and the requirement to produce an exemption notice after the fact. An agency decision to undertake an emergency action without environmental review may be subject to judicial review.

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Environmental Council

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

**§11-200-6 Applicant Actions**

- (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:
- (1) Implementing actions ~~which that~~ are either located in certain specified areas or contain certain specified **elements components**<sup>147/148</sup>; or
  - (2) Actions that require certain types of amendments to existing county general plans.

The **approving**<sup>149</sup> agency that initially received and agreed to process the request for approval shall require the applicant to prepare an EA of the proposed action at the earliest practicable time to determine whether an EIS is likely to be required; provided that if the approving agency determines, through its judgment and experience, that an EIS is likely to be required, the approving agency may authorize the applicant to choose not to prepare an EA and instead prepare an EIS that begins with the preparation of an EISPN.<sup>150</sup>

- (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the agency **processing**<sup>151</sup> ~~an applicant's request for approval to prepare an environmental assessment~~ the applicant to prepare an EA<sup>152</sup>. There are ~~seven~~ **six**<sup>153</sup> geographical categories, ~~five~~ **six**<sup>154</sup> ~~proposal elements~~ **component categories**<sup>155/156</sup>, and two administrative categories.

- (1) The ~~seven~~ **six**<sup>157</sup> geographical categories are:
- (A) The use of state or county lands;
  - (B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;
  - (C) Any use within the shoreline area as defined in section 205A-41, HRS;
  - (D) Any use within any historic site as designated in the national register or Hawaii **Register of Historic Places**<sup>158</sup>;

<sup>147</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).  
<sup>148</sup> Replaces the suggested term “element” with the term “component” to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.  
<sup>149</sup> Housekeeping. (Missing underlining in v0.1.)  
<sup>150</sup> Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.  
<sup>151</sup> Housekeeping. (Missing strikethrough in v0.1.)  
<sup>152</sup> Housekeeping.  
<sup>153</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>154</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>155</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).  
<sup>156</sup> Aligns language with “categories” used in previous sentence and uses the term “component” to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.  
<sup>157</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>158</sup> Adds specificity.

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

- 1 (E) Any use within the Waikiki area of Oahu, the boundaries of which are
- 2 delineated in the land use ordinance as amended, establishing the
- 3 "Waikiki Special District";
- 4 (F) Any reclassification of any land classified as conservation district by the
- 5 state land use commission under chapter 205, HRS; and
- 6 ~~(G) The construction of a new, or the expansion or modification of an existing~~
- 7 ~~helicopter facilities facility<sup>159</sup> within the State which that by way of their~~
- 8 ~~its<sup>160</sup> activities may affect;<sup>161</sup> any land classified as conservation district~~
- 9 ~~by the state land use commission under chapter 205, HRS; the shoreline~~
- 10 ~~area as defined in section 205A-41, HRS; or,<sup>162</sup> any historic site as~~
- 11 ~~designated in the National Register or Hawaii Register as provided for in~~
- 12 ~~the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E,~~
- 13 ~~HRS of Historic Places<sup>163</sup>; or, until the statewide historic places inventory~~
- 14 ~~is completed, any historic site found by a field reconnaissance of the area~~
- 15 ~~affected by the helicopter facility and which that is under consideration for~~
- 16 ~~placement on the National Register or the Hawaii Register of Historic~~
- 17 ~~Places.<sup>164</sup>~~
- 18 (2) ~~The five six<sup>165</sup> proposal elements component categories~~ are:
- 19 (A) Wastewater treatment unit, except an individual wastewater system or
- 20 wastewater treatment unit serving fewer than fifty single-family dwellings
- 21 or the equivalent;
- 22 (B) Waste-to-energy facility;
- 23 (C) Landfill;
- 24 (D) Oil refinery; or
- 25 (E) Power-generating facility.
- 26 (F) The construction of a new, or the expansion or modification of an existing
- 27 helicopter facilities facility<sup>166</sup> within the State that by way of their its<sup>167</sup>
- 28 activities may affect;<sup>168</sup> any land classified as conservation district by the
- 29 state land use commission under chapter 205, HRS; the shoreline area
- 30 as defined in section 205A-41, HRS; or,<sup>169</sup> any historic site as designated

159 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

160 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

161 Housekeeping.

162 Housekeeping.

163 Housekeeping. Unnecessary specificity.

164 Deletes and moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

165 Reflects reorganization of "helicopter facility" to a component category.

166 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

167 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

168 Housekeeping.

169 Housekeeping.



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in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places<sup>170</sup>; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.<sup>171</sup>

(23) The two administrative categories are:

- (A) Any amendment to existing county general plans, however denominated, which may include, but are not be limited to, development plans,<sup>172</sup> or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and
- (B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which 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.

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

<sup>170</sup> Housekeeping. Unnecessary specificity.

<sup>171</sup> Moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

<sup>172</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-7 Multiple or Phased Applicant or Agency**  
2 **Actions**

3 A group of actions proposed by an agency or an applicant shall be treated as a single action  
4 when:

5 (1) The component actions are phases or increments of a larger total undertaking  
6 and lack independent utility<sup>173</sup>;

7 (2) An individual project action is a necessary precedent for to<sup>174</sup> a larger project  
8 action<sup>175</sup>;

9 (3) An individual project action<sup>176</sup> represents a commitment to a larger project  
10 action<sup>177</sup>; or

11 (4) The actions in question are essentially identical and a single statement EIS will  
12 adequately address the impacts of each individual action and those of the group  
13 of actions as a whole.

14  
15 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
16

173 Incorporates the threshold for determining improper segmentation.

174 Stylistic change.

175 Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

176 Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

177 Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

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Environmental Council

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

1 **§11-200-8 Exempt Classes of Action Exemption**  
2 **Notices**<sup>178</sup>

- 3 (a) ~~Chapter 343, HRS, states that procedures whereby specific Specific<sup>179</sup> types of actions,~~  
4 ~~because they will probably have minimal or no significant effects, individually and~~  
5 ~~cumulatively, on the environment,<sup>180</sup> can be declared exempt from the preparation of an~~  
6 ~~EA.<sup>181</sup> a list of classes of actions shall be drawn up which, because they will probably~~  
7 ~~have minimal or no significant effect on the environment, may be declared exempt by the~~  
8 ~~proposing agency or approving agency from the preparation of an environmental~~  
9 ~~assessment provided that agencies declaring an action exempt under this section shall~~  
10 ~~obtain the advice of other outside agencies or individuals having jurisdiction<sup>182</sup> or~~  
11 ~~expertise as to the propriety of the exemption. Government Agency<sup>183</sup> activities that do~~  
12 ~~not rise to the level of being a project or program program or project, or are ordinary~~  
13 ~~functions that by their nature do not have the potential to adversely affect the~~  
14 ~~environment more than negligibly, which may include, among other activities, routine~~  
15 ~~repair, maintenance, purchase of supplies, and administrative actions involving~~  
16 ~~personnel only, shall not be considered projects or programs programs or projects for~~  
17 ~~the purposes of Chapter 343, HRS.<sup>184</sup> Actions declared exempt from the preparation of~~  
18 ~~an environmental assessment EA under this section are not exempt from complying with~~  
19 ~~any other applicable statute or rule. The following types of projects or programs are~~  
20 ~~eligible for exemption<sup>185</sup> list represents exempt classes of action:~~
- 21 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment,  
22 or topographical features, involving negligible minor<sup>186</sup> or no expansion or  
23 change of use beyond that previously existing;
  - 24 (2) Replacement or reconstruction of existing structures and facilities where the new  
25 structure will be located generally on the same site and will have substantially the  
26 same purpose, capacity, density, height, and dimensions as the structure  
27 replaced;
  - 28 (3) Construction and location of single, new, small facilities or structures and the  
29 alteration and modification of the same and installation of new, small, equipment

<sup>178</sup> Renames to shift focus from the “classes” (a term no longer used) to the notice.

<sup>179</sup> Removes unnecessary language.

<sup>180</sup> Removes unnecessary language. “Significant effects” as defined are “on the environment”.

<sup>181</sup> Incorporates language direction directly from chapter 343, HRS.

<sup>182</sup> Housekeeping.

<sup>183</sup> Clarifies that agencies are the government actors contemplated in this section, as opposed to other branches of the government or the federal government.

<sup>184</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

<sup>185</sup> Replaces “classes” language with “types”.

<sup>186</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

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- 1 and facilities and the alteration and modification of same, including, but not
- 2 limited to:
- 3 (A) Single-family residences less than 3,500 square feet, as measured by the
- 4 controlling law under which the proposed action is being considered,<sup>187</sup>
- 5 if<sup>188</sup> not in conjunction with the building of two or more such units;
- 6 (B) Multi-unit structures designed for not more than four dwelling units if not
- 7 in conjunction with the building of two or more such structures;
- 8 (C) Stores, offices, and restaurants designed for total occupant load of twenty
- 9 persons or less per structure, if not in conjunction with the building of two
- 10 or more such structures; and
- 11 (D) Water, sewage, electrical, gas, telephone, and other essential public
- 12 utility services extensions to serve such structures or facilities; accessory
- 13 or appurtenant structures including garages, carports, patios, swimming
- 14 pools, and fences; and, acquisition of utility easements;
- 15 (4) Minor alterations in the conditions of land, water, or vegetation;
- 16 (5) Basic data collection, research, experimental management, and resource and
- 17 infrastructure testing and<sup>189</sup> evaluation activities ~~which that~~ do not result in a
- 18 serious or major disturbance to an environmental resource;
- 19 (6) Construction or placement of minor structures accessory to existing facilities;
- 20 (7) Interior alterations involving things such as partitions, plumbing, and electrical
- 21 conveyances;
- 22 (8) Demolition of structures, except those structures located on any historic site as
- 23 designated in the national register or Hawaii Register of Historic Places<sup>190</sup>, or that
- 24 are under consideration for placement on the national register or the Hawaii
- 25 Register of Historic Places<sup>191</sup> as provided for in the National Historic Preservation
- 26 Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E,
- 27 HRS<sup>192</sup>;
- 28 (9) Zoning variances except shoreline set-back variances; ~~and~~<sup>193</sup>
- 29 ~~(10) Continuing administrative activities including, but not limited to purchase of~~
- 30 ~~supplies and personnel-related actions.~~<sup>194</sup>
- 31 (44 10<sup>195</sup>) Acquisition of land and existing structures, including single or multi-unit
- 32 dwelling units, for the provision of affordable housing, involving no material

<sup>187</sup> Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

<sup>188</sup> Stylistic; mirrors provision below (B).

<sup>189</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

<sup>190</sup> Adds specificity.

<sup>191</sup> Aligns language with section 343-5(a)(8)(C), HRS.

<sup>192</sup> Unnecessary language.

<sup>193</sup> Housekeeping.

<sup>194</sup> Deletes language because it is addressed at the beginning of paragraph (a).

<sup>195</sup> Housekeeping. Renumbering this and subsequent paragraphs.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 change of use beyond ~~that~~ previously existing ~~uses,~~<sup>196</sup> and for which the  
 2 legislature has appropriated or otherwise authorized funding<sup>197</sup>; ~~and~~<sup>198</sup>  
 3 (11) New construction of affordable housing that only has use of state or county lands  
 4 or funds as the sole<sup>199</sup> requirement for compliance with<sup>200</sup> chapter 343, HRS, and  
 5 as proposed<sup>201</sup> is consistent with existing state urban land classification, existing  
 6 county residential or mixed use zoning classification, and applicable federal,  
 7 state, and county development standards.<sup>202</sup>

8  
 9 (b) All exemptions under the ~~classes~~ types<sup>203</sup> in this section are inapplicable when the  
 10 cumulative impact of planned successive actions in the same place, over time, is  
 11 significant, or when an action that is normally insignificant in its impact on the  
 12 environment may be significant in a particularly sensitive environment.

13  
 14 (c) Any agency, at any time, may request that a new exemption ~~class~~ type<sup>204</sup> be added, or  
 15 that an existing one be amended or deleted. The request shall be submitted to the  
 16 council, in writing, and contain detailed information to support the request as set forth in  
 17 section 11-201-16, HAR, environmental council rules.

18  
 19 ~~(d) — Each agency, through time and experience, shall develop its own list of specific~~  
 20 ~~types of actions which fall within the exempt classes types above~~<sup>205</sup>, ~~as long as these~~  
 21 ~~lists are consistent with both the letter and intent expressed in these exempt classes~~  
 22 ~~here~~<sup>206</sup> ~~and chapter 343, HRS. These lists and any amendments to the lists shall be~~  
 23 ~~submitted to the council for review and concurrence. The lists shall be reviewed~~  
 24 ~~periodically by the council.~~

25  
 26 ~~(e)~~<sup>207</sup> ~~Actions that are clearly covered by an agency exemption list that has received~~  
 27 ~~council concurrence and do not have any potential to produce significant impacts do not~~

<sup>196</sup> Clarifies what “that” refers to.

<sup>197</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates ~~and compiles~~ the 2007 change.

<sup>198</sup> Housekeeping.

<sup>199</sup> Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, ~~not that the action only uses state or county funds or lands.~~

<sup>200</sup> Stylistic change.

<sup>201</sup> Removes ambiguity as to whether the project “as implemented” must be consistent.

<sup>202</sup> Adds affordable housing as an exemption type, with ~~caveats~~ the following caveats: 1) that the only trigger is use ~~of~~ state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

<sup>203</sup> Housekeeping.

<sup>204</sup> Housekeeping.

<sup>205</sup> Housekeeping.

<sup>206</sup> Housekeeping.

<sup>207</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 ~~require documentation.~~<sup>208</sup> ~~Actions with no documentation may still be subject to the~~  
2 ~~public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter~~  
3 ~~343, HRS.~~<sup>209</sup>

4  
5 ~~(f) For an action that an agency considered exempt according to the criteria in~~  
6 ~~paragraph (a) but is not clearly covered by the agency's exemption list, or is on the~~  
7 ~~agency's exemption list but that list has not received council concurrence within the past~~  
8 ~~five years, the agency shall undertake a systematic analysis to determine whether the~~  
9 ~~action merits exemption consistent with one or several of the types listed in paragraph~~  
10 ~~(a).~~<sup>210</sup> ~~For such actions, the agency shall obtain the advice of outside agencies or~~  
11 ~~individuals having jurisdiction or expertise as to the propriety of the exemption. An action~~  
12 ~~may not be segmented per section 11-200-7 so as to appear to be consistent with~~  
13 ~~several types listed in paragraph (a).~~<sup>211</sup>

14  
15 ~~(e g) Each agency shall maintain records of such~~<sup>212</sup> ~~actions, called exemption~~  
16 ~~notices,~~<sup>213</sup> ~~which it has found to be exempt from the requirements for preparation of an~~  
17 ~~environmental assessment EA in chapter 343, HRS, and each agency shall produce the~~  
18 ~~records for review upon request. The agency shall provide a means to notify and accept~~  
19 ~~input from the public in a timely manner after the exemption declaration is made. An~~  
20 ~~agency may request the office to publish the exemption notice in the periodic bulletin.~~  
21 ~~The public's right to judicial proceeding on the lack of an assessment under chapter 343,~~  
22 ~~HRS shall commence from the date the public is notified of the exemption through the~~  
23 ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~<sup>214</sup>

<sup>208</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de minimis* but may not require the level of consultation and documentation associated with typical projects or programs.

<sup>209</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers are out" and the agency may have erred in its decision to not prepare an EA.

<sup>210</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

<sup>211</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

<sup>212</sup> Housekeeping.

<sup>213</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

<sup>214</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 ~~(f h) In the event the governor declares a state of emergency pursuant to chapter~~  
2 ~~127A, HRS,<sup>215</sup> the governor may exempt any affected program or action from complying~~  
3 ~~with this chapter. has authority to suspend laws, including chapter 343, HRS. In such an~~  
4 ~~event, no exemption declaration is required and the proposing agency or approving~~  
5 ~~agency shall file an exemption notice in its records that the emergency action was~~  
6 ~~undertaken pursuant to a specific emergency proclamation.<sup>216</sup>~~

7  
8 ~~(i) An emergency action that is not initiated within the period of the governor's~~  
9 ~~emergency proclamation shall no longer be considered an emergency action and~~  
10 ~~therefore shall be subject to chapter 343, HRS.<sup>217/218</sup>~~

11  
12 ~~(d) Each agency, through time and experience, shall develop its own list consistent~~  
13 ~~with both the letter and intent expressed here and in chapter 343, HRS of specific~~  
14 ~~programs or projects that the agency considers to be included within the exempt types~~  
15 ~~above. These lists and any amendments to the lists shall be submitted to the council for~~  
16 ~~review and concurrence. The lists shall be reviewed periodically by the council.<sup>219</sup>~~

17  
18 ~~(e) Each agency shall create exemption notices for actions that it has found to be~~  
19 ~~exempt from the requirements for preparation of an EA. Each agency shall produce the~~  
20 ~~exemption notices for review upon request by the public or an agency.<sup>220</sup>~~

21  
22 ~~(f) Agencies shall consult on the propriety of an exemption and publish exemption~~  
23 ~~notices with the office. Consultation and publication of an exemption notice is not~~  
24 ~~required when:~~

25 ~~(1) The council has concurred with the agency's exemption list no more than seven~~  
26 ~~years before the agency initiates the action or authorizes an applicant to initiate~~  
27 ~~the action;~~

28 ~~(2) The action is consistent with the letter and intent of the agency's exemption list;~~  
29 ~~and~~

30 ~~(3) The action does not have any potential to produce significant impacts.<sup>221</sup>~~

<sup>215</sup> States the name of the statute for emergency proclamations.

<sup>216</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>217</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.

<sup>218</sup> Deletes subsections (d) - (i) and reorganizes content to increase readability.

<sup>219</sup> Requires an agency to create an exemption list and submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>220</sup> Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200-5.

<sup>221</sup> Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Provides an exception to the consultation and



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Environmental Council

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

- 1 (g) Actions with no published exemption notice may still be subject to the public's
- 2 right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343,
- 3 HRS, and shall be initiated within one hundred and twenty days of the agency's decision
- 4 to carry out the action or from the date the public becomes aware of the exemption
- 5 notice, whichever is later.<sup>222</sup>
- 6
- 7 (h) For consultation on the propriety of an exemption, an agency shall undertake an
- 8 analysis to determine whether the action merits exemption consistent with one or several
- 9 of the types listed in paragraph (a). The agency shall obtain the advice of other outside
- 10 agencies or individuals having jurisdiction or expertise as to the propriety of the
- 11 exemption. This analysis and consultation shall be documented in the exemption
- 12 notice.<sup>223</sup>
- 13
- 14 (i) To publish an exemption notice, the agency shall submit the exemption notice to
- 15 the office per section 11-200-3 for publication in the next periodic bulletin. The public's
- 16 right to a judicial proceeding on the lack of an assessment under chapter 343, HRS,
- 17 shall commence from the date of publication in the notice.<sup>224</sup>

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

20  
21  
22

---

publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

<sup>222</sup> Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.

<sup>223</sup> Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

<sup>224</sup> Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public's right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.

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Environmental Council

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

1 Subchapter 6 Determination of Significance

2 **§11-200-9 Assessment of Agency Actions and**  
3 **Applicant Actions**

4 (a) For agency actions, except those actions exempt from the preparation of an  
5 environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the  
6 proposing agency shall:

7 (1) Seek, at the earliest practicable time, the advice and input of the county agency  
8 responsible for implementing the county's general plan for each county in which  
9 the proposed action is to occur, and consult with other agencies having  
10 jurisdiction or expertise as well as those citizen groups and individuals ~~which~~ that  
11 the proposing agency reasonably believes ~~to~~ may<sup>225</sup> be affected;

12 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~  
13 the<sup>226</sup> statutory conditions under section 343-5(a), HRS, that<sup>227</sup> require the  
14 preparation of an environmental assessment EA;

15 (3) Prepare an environmental assessment EA pursuant to section 11-200-10 ~~of this~~  
16 ~~chapter which shall also identify~~ that identifies<sup>228</sup> potential impacts, ~~evaluate~~  
17 evaluates<sup>229</sup> the potential significance of each impact, and ~~provide~~ provides<sup>230</sup> for  
18 detailed study of significant impacts;

19 (4) Determine, after reviewing the environmental assessment EA described in  
20 paragraph (3), and considering the significance criteria in section 11-200-12,  
21 whether the proposed action warrants an anticipated ~~negative declaration~~ FONSI  
22 or an ~~environmental impact statement preparation notice~~ EISPN, provided that  
23 for an ~~environmental impact statement preparation notice~~ EISPN, the proposing  
24 agency shall inform the accepting authority of the proposed action;

25 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~  
26 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
27 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the  
28 completed informational form referenced<sup>231</sup> in section 11-200-3(d)<sup>232</sup>, and ~~four~~  
29 ~~copies of~~<sup>233</sup> the supporting environmental assessment EA (a draft environmental  
30 assessment EA for the anticipated ~~negative declaration~~ FONSI or a final  
31 environmental assessment EA for the environmental impact statement

<sup>225</sup> Housekeeping.

<sup>226</sup> Housekeeping.

<sup>227</sup> Housekeeping.

<sup>228</sup> Housekeeping.

<sup>229</sup> Housekeeping.

<sup>230</sup> Housekeeping.

<sup>231</sup> Housekeeping.

<sup>232</sup> Housekeeping.

<sup>233</sup> OEQC only needs one copy, not four.

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Environmental Council

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

- 1           ~~preparation notice~~ EISPN, when applicable<sup>234</sup>) with the office in accordance with
- 2           sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of
- 3           this chapter;
- 4           (6) ~~Distribute~~ Circulate<sup>235</sup>, concurrently with the filing in paragraph (5), the draft
- 5           ~~environmental assessment~~ EA to other agencies having jurisdiction or expertise
- 6           as well as citizen groups and individuals ~~which~~ that the proposing agency
- 7           reasonably believes ~~to~~ may<sup>236</sup> be affected;
- 8           (7) Deposit, concurrently with the filing in paragraph (5), one ~~paper~~<sup>237</sup> copy of the
- 9           draft ~~environmental assessment~~ EA at the nearest state library in each county in
- 10          which the proposed action is to occur and one paper copy at the Hawaii
- 11          Documents Center<sup>238</sup>;
- 12          (8) Receive and respond to public comments in accordance with:
- 13           (A)    section 11-200-9.1 for draft ~~environmental assessments~~ EAs for
- 14           anticipated ~~negative declaration~~ FONSI determinations; or
- 15           (B)    section 11-200-15 for ~~environmental assessments~~ EAs for ~~preparation~~
- 16           ~~notices~~ EISPNS.
- 17          For draft ~~environmental assessments~~ EAs, the proposing agency shall revise the
- 18          ~~environmental assessment~~ EA to incorporate public comments as appropriate,
- 19          and append copies of comment letters and responses in the ~~environmental~~
- 20          ~~assessment~~ EA (the draft ~~environmental assessment~~ EA as revised, shall be filed
- 21          as a final ~~environmental assessment~~ EA as described in section 11-200-11.2);
- 22          and
- 23          (9)    As appropriate, issue either a ~~negative declaration~~ FONSI determination<sup>239</sup> or an
- 24          ~~environmental impact statement preparation notice~~ EISPN pursuant to the
- 25          requirements of section 11-200-11.2, ~~provided that for~~, For<sup>240</sup> ~~preparation notice~~
- 26          EISPNS determinations<sup>241</sup>, the proposing agency shall proceed to section 11-
- 27          200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-
- 28          200-13, and 11-200-14, as appropriate.
- 29

<sup>234</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>235</sup> The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>236</sup> Housekeeping.

<sup>237</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>238</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>239</sup> Removes redundant term “definition” as a FONSI is by definition a determination.

<sup>240</sup> Housekeeping.

<sup>241</sup> An EISPN is by definition a determination.

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## Environmental Council

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

- 1 (b) For applicant actions, except those actions ~~exempt~~ **excluded**<sup>242</sup> from the preparation of  
 2 an ~~environmental assessment~~ EA pursuant to section 343-5, HRS, or those actions  
 3 ~~which that~~ the approving agency declares exempt pursuant to section 11-200-8, the  
 4 approving agency shall:
- 5 (1) Require the applicant, at the earliest practicable time, to seek the advice and  
 6 input of the lead county agency responsible for implementing the county's  
 7 general plan for each county in which the proposed action is to occur, and  
 8 consult with other agencies having jurisdiction or expertise as well as those  
 9 citizen groups and individuals ~~which that~~ the approving agency reasonably  
 10 believes to be affected;
- 11 ~~(2) Require the applicant to provide whatever information the approving agency~~  
 12 ~~deems necessary to~~<sup>243</sup> ~~complete the preparation of an environmental~~  
 13 ~~assessment prepare an EA in accordance with section 11-200-10;~~<sup>244</sup>
- 14 ~~(3)~~ **2**<sup>245</sup> Within thirty days from the date of receipt of the applicant's ~~complete~~ **completed**  
 15 request for approval to the approving agency:  
 16 (A) ~~prepare an environmental assessment pursuant to section 11-200-10;~~  
 17 ~~and~~  
 18 (B) ~~determine, after reviewing the environmental assessment and considering~~  
 19 ~~the significance criteria in section 11-200-12 whether the proposed action~~  
 20 ~~warrants an anticipated negative declaration or an environmental impact~~  
 21 ~~statement preparation notice;~~  
 22 ~~require the applicant~~<sup>246</sup> ~~to prepare a draft EA pursuant to section 11-200-10;~~<sup>247</sup>
- 23 **4** ~~3~~<sup>248/249</sup> Determine, after reviewing the draft EA and considering the significance  
 24 criteria in section 11-200-12, whether the proposed action warrants an  
 25 anticipated FONSI or an EISPN;<sup>250</sup>
- 26 ~~(5)~~ **4**<sup>251</sup> File the appropriate notice of determination (anticipated ~~negative declaration~~  
 27 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
 28 accordance with section 11-200-11.1 or 11-200-11.2), the completed

<sup>242</sup> Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.

<sup>243</sup> Narrows the language to focus on the EA on the content requirements.

<sup>244</sup> This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.

<sup>245</sup> Housekeeping (renumbering).

<sup>246</sup> Shifts the focus of preparation to the applicant per Act 172 (2012).

<sup>247</sup> Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within ~~30~~ **thirty** days of receipt of a request for approval which course of environmental review the applicant is to take.

<sup>248</sup> Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

<sup>249</sup> Housekeeping (renumbering).

<sup>250</sup> Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.

<sup>251</sup> Housekeeping (renumbering).

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Environmental Council

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

1 informational form referenced<sup>252</sup> in section 11-200-3(d)<sup>253</sup> and ~~four copies of the~~  
 2 supporting environmental assessment EA (a draft environmental assessment EA  
 3 for the anticipated ~~negative declaration~~ FONSI or a final environmental  
 4 assessment EA for the ~~environmental impact statement preparation notice~~  
 5 EISPN, when applicable<sup>254</sup>) with the office in accordance with sections 11-200-3,  
 6 and 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter<sup>255</sup>;  
 7 ~~(6 5)~~<sup>256</sup> Distribute ~~Circulate~~<sup>257</sup>, or require the applicant to ~~distribute~~ circulate<sup>258</sup>,  
 8 concurrently with the filing in paragraph (4), the draft ~~environmental assessment~~  
 9 EA to other agencies having jurisdiction or expertise as well as citizen groups  
 10 and individuals ~~which~~ that the approving agency reasonably believes to be  
 11 affected;  
 12 ~~(7 6)~~<sup>259</sup> Deposit or require the applicant to deposit, concurrently with the filing in  
 13 paragraph (4), one paper<sup>260</sup> copy of the draft ~~environmental assessment~~ EA at  
 14 the nearest state library in each county in which the proposed action is to occur  
 15 and one paper copy at the Hawaii Documents Center<sup>261</sup>;  
 16 ~~(8 7)~~<sup>262</sup> Receive public comments, transmit copies of public comments to the applicant  
 17 and require ~~Require~~ the applicant to receive and respond to public comments, all  
 18 in accordance with section 11-200-9.1 for draft ~~environmental assessment~~ EA, or  
 19 11-200-15 for ~~preparation notices~~ EISPNs and their associated final  
 20 environmental assessment EA. For draft ~~environmental assessment~~ EA, the  
 21 approving agency shall require the applicant:  
 22 (A)<sup>263</sup> ~~to provide~~ revise the draft EA with<sup>264</sup> ~~whatever~~ information the approving  
 23 agency deems necessary in accordance with section 11-200-10<sup>265</sup> to

<sup>252</sup> Housekeeping.

<sup>253</sup> Housekeeping.

<sup>254</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>255</sup> Adds language to ensure that other sections are fulfilled as well.

<sup>256</sup> Housekeeping (renumbering).

<sup>257</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>258</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>259</sup> Housekeeping (renumbering).

<sup>260</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>261</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>262</sup> Housekeeping (renumbering).

<sup>263</sup> Breaks up the paragraph so that the three requirements for the applicant are easier to read.

<sup>264</sup> Housekeeping.

<sup>265</sup> Emphasizes that the final EA content should still meet the EA content requirements as set for forth in section 10.

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Environmental Council

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

- 1                    ~~revise the draft environmental assessment to<sup>266</sup> inform its determination~~  
 2                    ~~for a FONSI or EISPN, taking into account comments on the draft EA<sup>267</sup>;~~  
 3                    (B)    to incorporate comments as appropriate; and,  
 4                    (C)    to include copies of comment letters and the applicant's<sup>268</sup> responses,  
 5                    ~~(the The<sup>269</sup> revised draft environmental assessment EA, as revised, shall be filed~~  
 6                    ~~as a final environmental assessment EA as described in section 11-200-11.2)<sup>270</sup>;~~  
 7                    and  
 8                    (9 8)<sup>271</sup> As appropriate, issue a ~~negative declaration FONSI determination<sup>272</sup>~~ or an  
 9                    ~~environmental impact statement preparation notice EISPN with appropriate~~  
 10                    ~~notice of determination thereof pursuant to section 11-200-11.2 within thirty~~  
 11                    ~~days<sup>273</sup> from the end of the thirty-day public comment period of receiving~~  
 12                    ~~information required for delivery to the approving agency pursuant to paragraph 8~~  
 13                    ~~7<sup>274</sup>/<sup>275</sup>. For preparation notice EISPN determinations, the approving agency shall~~  
 14                    ~~proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-~~  
 15                    ~~10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.~~  
 16  
 17 (c)    For agency or applicant actions, the proposing agency or the applicant approving  
 18                    agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable  
 19                    range of<sup>276</sup> alternatives, in addition to the proposed action in the environmental  
 20                    assessment EA.<sup>277</sup>  
 21  
 22 (d)    For agency or applicant actions, if the agency determines, through its judgment and  
 23                    experience, that an EIS is likely to be required, the agency may choose not to prepare  
 24                    an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and

<sup>266</sup> Housekeeping. Removes redundant language.

<sup>267</sup> Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.

<sup>268</sup> Housekeeping.

<sup>269</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>270</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>271</sup> Housekeeping (renumbering).

<sup>272</sup> Removes redundant language. A FONSI is defined as a determination in section 11-200-2.

<sup>273</sup> Removes inadvertent strikethrough.

<sup>274</sup> Paragraphs renumbered.

<sup>275</sup> Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.

<sup>276</sup> Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.

<sup>277</sup> Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            instead shall prepare or shall cause to be prepared<sup>278</sup> an EIS that begins with an  
2            EISPN.<sup>279</sup>  
3  
4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
5  
6  
7

---

<sup>278</sup> Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

<sup>279</sup> Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-9.1 Public Review & Response Requirements**  
2 **for Draft Environmental Assessments for Anticipated**  
3 **~~Negative Declaration~~ Finding of No Significant Impact<sup>280</sup>**  
4 **Determinations & Addenda to Draft Environmental**  
5 **Assessments**

6 (a) This section shall apply only if a proposing agency or an ~~approving agency~~ applicant<sup>281</sup>  
7 anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that  
8 agency ~~or applicant~~<sup>282</sup> has completed the draft EA requirements of section 11-200-9(a),  
9 paragraphs (1), (2), (3), (4), (5), (6) and (7) ~~for agencies~~<sup>283</sup>, or section 11-200-9(b),  
10 paragraphs (1), (2), (3), (4), (5) and (6) ~~for applicants~~<sup>284</sup>, as appropriate.

11  
12 (b) ~~The period for public review and for submitting written comments for both agency actions~~  
13 ~~and applicant actions shall begin as of the initial issue date that notice of availability of~~  
14 ~~the draft environmental~~<sup>285</sup> ~~assessment EA was published in the periodic bulletin and~~  
15 ~~shall continue for a period of thirty days.~~ Unless mandated otherwise by statute<sup>286</sup>, for  
16 agency actions and applicant actions, the period for public review and for submitting  
17 written comments shall commence from the date of notice of availability of the draft EA is  
18 initially issued in the periodic bulletin and shall continue for a period of thirty calendar  
19 days.<sup>287</sup> Written comments sent<sup>288</sup> to the proposing agency or approving agency  
20 applicant<sup>289</sup>, whichever is applicable, with a copy of the comments to the applicant, if  
21 applicable,<sup>290</sup> or proposing agency,<sup>291</sup> shall be received by<sup>292</sup> or postmarked to the  
22 proposing agency or approving agency applicant<sup>293</sup>, within the thirty-day period. Any



280 Housekeeping.

281 Reflects change that the applicant, rather than the approving agency, prepares the EA.

282 Reflects change that the applicant, rather than the approving agency, prepares the EA.

283 These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

284 These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

285 Housekeeping. (v0.1 omitted strikethrough)

286 Acknowledges that the public review period may be altered for certain actions by statute.

287 Measures time consistently in the process. Adds clarity to regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

288 Stylistic change.

289 Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

290 Clarifies that applicants are not always involved and when not involved, not copy of the comments need to be sent to the applicant.

291 Redundant; the proposing agency is already as identified as receiving comments.

292 Stylistic change.

293 Reflects change that the applicant, rather than the approving agency, prepares the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 comments outside of the thirty-day period need not be ~~considered or~~<sup>294</sup> responded to nor  
 2 ~~considered in the final EA. However, for a proposed site for a new correctional facility or~~  
 3 ~~for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS,~~  
 4 ~~the period for public review and submitting written comments thirty-day period shall be a~~  
 5 ~~sixty-day period days.~~<sup>295/296</sup>  
 6  
 7 (c) For agency actions, the proposing agency shall<sup>297</sup> respond in writing to all comments  
 8 received or postmarked during the ~~thirty-day~~ ~~statutorily mandated~~<sup>298</sup> review period,  
 9 incorporate comments ~~into the final EA~~<sup>299</sup> as appropriate,<sup>300</sup> and append the comments  
 10 and responses ~~in to~~<sup>301</sup> the final environmental assessment EA. Each response shall be  
 11 sent directly to the person commenting, with copies of the response also sent to the  
 12 office. ~~If a number of comments are identical or very similar, the proposing agency may~~  
 13 ~~group the comments and prepare a single standard response for each group. When~~  
 14 ~~grouping comments, the agency must include each name of the commentor along with~~  
 15 ~~the grouped response. One representative copy of comments that are identical or very~~  
 16 ~~similar may be included in the final EA rather than reproducing each individual comment.~~  
 17 ~~All individual comments and representative copies of identical or very similar comments~~  
 18 ~~the~~<sup>302</sup> ~~must be attached~~ ~~appended~~ to the final EA regardless of whether the agency  
 19 believes the comments merit individual discussion in the body of the final EA.<sup>303</sup>  
 20  
 21

<sup>294</sup> Stylistic change.

<sup>295</sup> Incorporates the public comment period and time limit from HRS § 353-16.35.

<sup>296</sup> Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.

<sup>297</sup> Acknowledges that some statutes may modify the public review and comment period.

<sup>298</sup> Acknowledges that other statutes may require comment periods of varying lengths.

<sup>299</sup> Clarifies that the comments are included in the final EA.

<sup>300</sup> Housekeeping.

<sup>301</sup> Housekeeping.

<sup>302</sup> Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en mass and to focus responses on the issues raised by comments rather than on responding to individual commentors.

<sup>303</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

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Environmental Council

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

- 1 (d) For applicant actions, the applicant shall respond in writing to all comments received or  
 2 postmarked during the thirty-day review period and ~~the approving agency shall~~<sup>304</sup>  
 3 incorporate ~~or~~ comments into the final EA as appropriate, and<sup>305</sup> append the comments  
 4 and responses in to<sup>306</sup> the final ~~environmental assessment~~ EA. If a number of comments  
 5 are identical or very similar, the applicant may group the comments a and<sup>307</sup> prepare a  
 6 single standard response for each group. When grouping comments, the applicant must  
 7 include each name of the commentor along with the grouped response.<sup>308</sup> The  
 8 comments must be attached to the final EA regardless of whether the approving agency  
 9 believes the comments merit individual discussion in the body of the final EA.<sup>309</sup> ~~Each~~  
 10 ~~response shall be sent directly to the person commenting with a copy to the office.~~<sup>310</sup> A  
 11 ~~copy of each response shall be sent to the approving agency for its timely preparation of~~  
 12 ~~a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or~~  
 13 ~~11-200-11.2.~~<sup>311</sup>
- 14
- 15 (e) An addendum document to a draft ~~environmental assessment~~ EA shall reference the  
 16 original draft ~~environmental~~<sup>312</sup> ~~assessment~~ EA it attaches to and shall comply with all  
 17 applicable public review and comment requirements set forth in sections 11-200-3 and  
 18 11-200-9.

19  
20 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp: HRS §343-3, 343-5, 343-  
21 6)

22  
23

<sup>304</sup> The applicant prepares the document, and so therefore has the responsibility to incorporate the comments and responses into the document.

<sup>305</sup> Clarifies that the comments are incorporated into the final EA.

<sup>306</sup> Housekeeping.

<sup>307</sup> Housekeeping.

<sup>308</sup> Ensures that each individual who submits a comment, even when it is in the form of a pre-printed postcard or letter that may be grouped with other identical or very similar comments, can verify that the individual's comment was received and responded to.

<sup>309</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments.

<sup>310</sup> Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>311</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

<sup>312</sup> Housekeeping. (v0.1 omitted strikethrough)

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**Proposed §11-200-XX Environmental Assessment Style**

(a) In developing the draft and final EA, proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the EA. The scope of the EA may vary with the scope of the proposed action and its impact. Data and analyses in an EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. An EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the EA, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EA may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EA for these types of actions may be broader and more general than an EA for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. Analysis may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EA and that are proposed to be carried out in conformance with the conditions and mitigation measures presented in the EA may require no or limited further review.<sup>313</sup>

<sup>313</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.

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Environmental Council

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

1 (c) In preparing any EA, care shall be taken to concentrate on important issues and to  
2 ensure that the EA remains an essentially self-contained document, capable of being  
3 understood by the reader without the need for undue cross-reference.<sup>314</sup>  
4

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

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<sup>314</sup> Mirrors subsection (c) in section 11-200-19, Environmental Impact Style.


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Environmental Council

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

1 **§11-200-10 Contents of an Environmental Assessment**

2 The proposing agency or ~~approving agency~~ applicant<sup>315</sup> shall prepare ~~any a~~<sup>316</sup> draft or final  
3 environmental assessment EA of each ~~proposed for any~~<sup>317</sup> action ~~not exempt under section 11-~~  
4 ~~200-8~~<sup>318</sup> and determine whether the anticipated effects constitute a significant effect in the  
5 context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall  
6 contain, but not be limited to, the following information:

- 7 (1) Identification of applicant or proposing agency;
- 8 (2) Identification of approving agency, if applicable;
- 9 (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~  
10 ~~preparing~~<sup>319</sup> the assessment;
- 11 (4) General description of the action's technical, economic, social, cultural<sup>320</sup> and  
12 environmental characteristics;
- 13 (5) Summary description of the affected environment, including suitable and  
14 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
15 Floodway Boundary Maps, or United States Geological Survey topographic  
16 maps;
- 17 (6) Identification and summary analysis<sup>321</sup> of impacts and alternatives considered;
- 18 (7) Proposed mitigation measures;
- 19 (8) Agency determination ~~or, for final EAs, or draft environmental assessments EAs~~  
20 ~~only~~, an anticipated determination for draft EAs<sup>322</sup>;
- 21 (9) Findings and reasons supporting the agency determination or anticipated  
22 determination;
- 23 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be  
24 prepared;
- 25 (11) List of all required<sup>323</sup> permits and approvals (State, federal, county) ~~required and~~  
26 identification of which are considered to be discretionary<sup>324</sup>; and

315 Removes "approving agency" and replaces with "applicant" because an applicant, rather than an agency, is the one who will prepare the EA.

316 Housekeeping.

317 Stylistic change.

318 Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.

319 ~~Uses more accurate time consistent with language in the rules. Uses more accurate language ("preparing" rather than "making") that is consistent with language in the rules.~~

320 Aligns provision with content requirement of a draft EIS under section 11-200-17(e).

321 Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a detailed discussion detailed enough sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

322 Stylistic change to improve clarity.

323 Housekeeping. Moves the word required from the end of the clause to before the word "permits".

324 Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

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Environmental Council

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

1 (12) Written comments and responses to the comments ~~under~~ received pursuant  
2 to<sup>325</sup>the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1),  
3 or 11-200-15, and statutorily prescribed public review periods.  
4

5 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),  
6 343-6)  
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14 **§11-200-11 REPEALED.**

15 [R AUG 31 1996]  
16

17

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<sup>325</sup> Housekeeping.



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Environmental Council

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

1 **§11-200-11.1 Notice of Determination for Draft**  
2 **Environmental Assessments**

- 3 (a) After:<sup>326</sup>
- 4 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>327</sup> ~~an environmental assessment~~  
5 ~~a draft EA, and~~<sup>328</sup>
- 6 (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>329</sup>
- 7 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
8 if the proposing agency or the approving agency anticipates that the proposed action is  
9 not likely to have a significant effect, ~~if the proposing agency or approving agency~~<sup>330</sup>  
10 shall issue a notice of ~~determination~~<sup>331</sup> ~~which that shall be~~<sup>332</sup> an anticipated negative  
11 ~~declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.  
12
- 13 (b)<sup>333</sup> The proposing agency or approving agency shall ~~also file such the~~<sup>334</sup> notice and  
14 supporting draft EA<sup>335</sup> with the office as early as possible after the determination is made  
15 pursuant to and in accordance with section 11-200-9,<sup>336</sup> and the requirements in  
16 subsection (e)<sup>337</sup> ~~along with four copies of the supporting environmental assessment~~<sup>338</sup>.  
17 ~~In addition to the above, the anticipated negative declaration determination for any~~  
18 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~  
19 applicant actions, the approving agency shall also send the anticipated FONSI to the  
20 applicant.<sup>339</sup>  
21
- 22 (b)~~c~~ The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
23 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
24 of receipt by the office in accordance with section 11-200-3.

<sup>326</sup> Housekeeping. Breaks out three conditions into ~~3~~ three items and capitalizes each of the numbered items to make the language clearer.

<sup>327</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>328</sup> Housekeeping. Specifies draft EA.

<sup>329</sup> Housekeeping.

<sup>330</sup> Housekeeping.

<sup>331</sup> Removes redundant language. An anticipated FONSI is defined as a "determination".

<sup>332</sup> Removes redundant language.

<sup>333</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>334</sup> Housekeeping.

<sup>335</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>336</sup> Housekeeping.

<sup>337</sup> Housekeeping.


<sup>338</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>339</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

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Environmental Council

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

- 1 (ed) The notice of an anticipated FONSI determination shall **indicate include** in a concise
- 2 manner:
- 3 (1) Identification of the<sup>340</sup> **applicant or** proposing agency **or applicant**<sup>341</sup>;
- 4 (2) Identification of the approving agency or<sup>342</sup> accepting authority;
- 5 (3) **Brief A brief**<sup>343</sup> description of the<sup>344</sup> **proposed** action;
- 6 (4) **Determination** The determination anticipated FONSI<sup>345</sup>;
- 7 (5) Reasons supporting the<sup>346</sup> **anticipated FONSI determination**; and 
- 8 (6) **Name** The name<sup>347</sup>, title, contact information, including the email address,
- 9 physical<sup>348</sup> address, and phone number of **a contact person an individual**
- 10 **representative of the proposing agency or applicant who may be contacted** for
- 11 further information.<sup>349</sup>
- 12
- 13 (de) When an agency withdraws a document, determination, or both<sup>350</sup> pursuant to its the
- 14 agency's<sup>351</sup> rules, the agency shall submit to the office a written letter informing the office
- 15 of its the<sup>352</sup> withdrawal **and the rationale for the withdrawal**<sup>353</sup>. The office shall publish
- 16 notice of agency withdrawals in accordance with section 11-200-3.
- 17
- 18 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
- 19

<sup>340</sup> Housekeeping.

<sup>341</sup> **Parallels similar sentences in the regulations that reference the "proposing agency" first and the "applicant" second.**

<sup>342</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>343</sup> Housekeeping.

<sup>344</sup> Housekeeping.

<sup>345</sup> Housekeeping.

<sup>346</sup> Housekeeping.

<sup>347</sup> Housekeeping.

<sup>348</sup> **includes Modernizes the requirements to include** email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>349</sup> **Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.**

<sup>350</sup> Clarifies that an agency may withdraw a document (i.e., FEA) **as well as being able to and may** withdraw a determination (i.e., EISPN or FONSI).

<sup>351</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

<sup>352</sup> **Housekeeping.**

<sup>353</sup> **Clarifies that agencies should support the withdrawal notice to the office with a rationale.**

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Environmental Council

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

**§11-200-11.2 Notice of Determination for Final Environmental Assessments**

- (a) After:<sup>354</sup>
  - (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>355</sup> a final environmental assessment EA,
  - (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>356</sup>
  - (3) ~~applying~~ Applying the significance criteria in section 11-200-12,

the proposing agency or the approving agency shall issue ~~one of the following notices a~~  
~~notice~~<sup>357</sup> of determination for<sup>358</sup> an EISPN or FONSI<sup>359</sup> in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office ~~addressing the requirements in~~  
~~subsection (c), along with four copies of the supporting final environmental~~  
~~assessment,~~<sup>360</sup> ~~provided that in addition to the above, all notices of determination for~~  
~~any applicant action shall be mailed to the requesting applicant by the approving~~  
~~agency.~~<sup>361</sup>
- (4~~b~~)<sup>362</sup> ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination ~~which that~~ shall be an ~~environmental impact statement preparation notice~~ EISPN and such notice shall be filed as early as possible ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>363</sup>.
- (2~~c~~) ~~Negative declaration~~ FONSI. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination ~~which that~~<sup>364</sup> shall be a ~~negative declaration~~ FONSI, ~~and the proposing agency or approving agency shall file such notice with the office as early as possible~~  
~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>365</sup>.

<sup>354</sup> Housekeeping. Breaks out three conditions into 3 three items and capitalizes each of the numbered items to make the language clearer.

<sup>355</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>356</sup> Housekeeping.

<sup>357</sup> Housekeeping.

<sup>358</sup> Removes redundant language. A FONSI and EISPN are by definition "determinations".

<sup>359</sup> Clarifies which of two determinations is to be issued.

<sup>360</sup> Removes unnecessary language on final EA filing requirements.

<sup>361</sup> This requirement is now addressed in the new proposed paragraph D.

<sup>362</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>363</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.


<sup>364</sup> Housekeeping.

<sup>365</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (d) The proposing agency or approving agency shall file the notice and the supporting final
- 2 EA with the office as early as possible after the determination is made in accordance
- 3 with section 11-200-9, addressing<sup>366</sup> the requirements in subsection (f).<sup>367</sup> For applicant
- 4 actions, the approving agency shall send the notice of determination for an EISPN or
- 5 FONSI to the applicant.<sup>368</sup>
- 6
- 7 ~~(b)~~ The office shall publish the appropriate notice of determination in the periodic bulletin
- 8 following receipt of the documents in subsection (a) by the office in accordance with
- 9 section 11-200-3.
- 10
- 11 ~~(e)~~ The notice of determination for a FONSI<sup>369</sup> shall indicate in a concise manner:
- 12 (1) Identification of the<sup>370</sup> applicant or proposing agency;
- 13 (2) Identification of the approving agency or<sup>371</sup> accepting authority;
- 14 (3) ~~Brief~~ A brief<sup>372</sup> description of the<sup>373</sup> proposed action;
- 15 (4) ~~Determination~~ The determination<sup>374</sup>;
- 16 (5) Reasons supporting the<sup>375</sup> determination; and 
- 17 (6) ~~Name~~ The name<sup>376</sup>, title, contact information, including the email address,
- 18 physical<sup>377</sup> address, and phone number of ~~a contact person an individual~~
- 19 ~~representative of the proposing agency or applicant who may be contacted~~ for
- 20 further information.<sup>378/379</sup>

<sup>366</sup> Housekeeping. (v0.1 omitted underlining)

<sup>367</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>368</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>369</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.

<sup>370</sup> Housekeeping.

<sup>371</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>372</sup> Housekeeping.

<sup>373</sup> Housekeeping.

<sup>374</sup> Housekeeping.

<sup>375</sup> Housekeeping.

<sup>376</sup> Housekeeping.

<sup>377</sup> Modernizes the requirements to ~~includes include~~ email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>378</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>379</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

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Environmental Council

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

1           The notice of determination for an EISPN shall be prepared pursuant to section 11-200-  
2           15.<sup>380</sup>

3  
4   (dg)   When an agency withdraws a document, determination, or both<sup>381</sup> pursuant to ~~its~~ the  
5           agency's<sup>382</sup> rules, the agency shall submit to the office a written letter informing the office  
6           of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
7           with section 11-200-3.

8  
9   [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

10  
11  
12

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<sup>380</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

<sup>381</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

<sup>382</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 §11-200-12 Significance Criteria**

- 2 (a) In considering the significance of potential environmental effects, agencies shall  
3 consider the sum of effects on the quality of the environment,<sup>383</sup> and shall evaluate the  
4 overall and cumulative effects of an action.  
5
- 6 (b) In determining whether an action may have a significant effect on the environment, the  
7 agency shall consider every phase of a proposed action, the expected consequences,  
8 both primary and secondary, and the cumulative as well as the short-term and long-term  
9 effects of the action. In most instances, an action shall be determined to have a  
10 significant effect on the environment if **it is likely to**<sup>384</sup>:
- 11 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~  
12 ~~cultural resource~~ Irrevocably **commits** ~~commit~~<sup>385</sup> a natural **or cultural**<sup>386</sup>  
13 ~~resource~~<sup>387</sup>;
- 14 (2) **Curtails** ~~Curtail~~ the range of beneficial uses of the environment;
- 15 (3) **Conflicts** ~~Conflict~~ with the state's ~~long-term~~ environmental policies or **long-term**  
16 **environmental**<sup>388</sup> goals and guidelines as expressed in chapter 344, HRS, **or**  
17 **other laws**,<sup>389</sup> and any revisions thereof and amendments thereto, court  
18 decisions, or executive orders;
- 19 (4) **Substantially Adversely**<sup>390</sup> ~~affects~~ **Have a substantial adverse effect on**<sup>391</sup> the  
20 economic ~~welfare~~, ~~or~~ social welfare, ~~or~~ cultural practices<sup>392</sup> of the community or  
21 State;
- 22 (5) **Substantially affects** **Have a substantial adverse effect on**<sup>393</sup> public health;

---

<sup>383</sup> Housekeeping.

<sup>384</sup> While section 5 of chapter 345, HRS, provides that an EIS is required for an action that "may" have a significant effect, the Supreme Court of Hawaii has interpreted the word "may" to mean "likely". For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will "likely" have a significant effect on the environment.

<sup>385</sup> Housekeeping. (Makes each item read grammatically from the revised lead in language "is likely to") and revises language to match the definition of "significant effect" in Section 343-2, HRS.

<sup>386</sup> Reinserts language regarding loss or destruction of cultural resources.

<sup>387</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

<sup>388</sup> Revises language to match the definition of "significance **significant effect**" in Section 343-2, HRS.

<sup>389</sup> Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>390</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>391</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>392</sup> Revises language to match the definition of "significance" in ~~Section~~ **section** 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.

<sup>393</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

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## Environmental Council

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

- 1 (6) ~~Involves~~ **Involve** secondary **adverse**<sup>394</sup> impacts, such as population changes or  
2 effects on public facilities;
- 3 (7) ~~Involves~~ **Involve** a substantial degradation of environmental quality;
- 4 (8) Is individually limited but cumulatively has ~~considerable~~ **substantial adverse**<sup>395</sup>  
5 effect upon the environment or involves a commitment for larger actions;
- 6 (9) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>396</sup> a rare, threatened,  
7 or endangered species, or its habitat;
- 8 (10) ~~Detrimentially affects~~ **Have a substantial adverse effect on**<sup>397</sup> air or water quality  
9 or ambient noise levels;
- 10 (11) ~~Affects~~ **Have a substantial adverse effect on**<sup>398</sup> or is likely to suffer damage by  
11 being located in an environmentally sensitive area such as a flood plain, tsunami  
12 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh  
13 water, or coastal waters;
- 14 (12) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>399</sup> scenic vistas and  
15 viewplanes identified in county or state plans or studies; or,
- 16 (13) ~~Requires~~ **Require** substantial energy consumption.

17  
18 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)  
19  
20

<sup>394</sup> Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>395</sup> Retains the focus on "considerable effects" through the synonym "substantial effects" and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>396</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>397</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS and maintains uniformity with the threshold of "substantially adverse" used in this section.

<sup>398</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>399</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.



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Environmental Council

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

**§11-200-13 Consideration of Previous Determinations and Accepted Statements**

- (a) Chapter 343, HRS, provides that whenever ~~Whenever~~<sup>400</sup> an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether ~~a statement~~ an EIS is required, such as exemption notices, FONSI's, and EISPNs, EAs,<sup>401</sup> and previously accepted statements EIS EISs<sup>402</sup>.
- (b) Previous determinations, EAs,<sup>403</sup> and previously accepted statements EISs may be incorporated into an exemption notice, EA, EISPN, or EIS, by ~~applicants and agencies and applicants~~<sup>404</sup> whenever the information contained therein is pertinent to the decision at hand<sup>405</sup> and has logical relevancy and bearing to the proposed action being considered<sup>406</sup>.
- (c) Agencies and applicants<sup>407</sup> shall not, without considerable pre-examination and comparison, use past determinations, EAs,<sup>408</sup> and previous previously accepted<sup>409</sup> statement EISs to apply to the action at hand. The proposed action for which a determination is sought<sup>410</sup> shall be thoroughly reviewed prior to the use of previous determinations, EAs,<sup>411</sup> and previously accepted statements EISs. Further, when previous determinations, EAs,<sup>412</sup> and previous statements EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered<sup>413</sup>.

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

---

400 Removes the reference to chapter 343, HRS, so that the sentence is easier to read.

401 Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

402 Housekeeping.

403 Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

404 Housekeeping (word order).

405 Removes unnecessary language and increases readability.

406 Removes unnecessary language and clarifies that the action referenced is the proposed action.

407 Clarifies that this subsection also applies to applicants preparing EISs.

408 Clarifies that previously completed EAs may also be considered.

409 Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.

410 Removes unnecessary language and increases readability.

411 Clarifies that previously completed EAs may also be considered.

412 Clarifies that previously completed EAs may also be considered.

413 Removes unnecessary language and increases readability.

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Environmental Council

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

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 **§11-200-14 General Provisions**

3 (a)<sup>414</sup> Chapter 343, HRS, directs that in both agency and applicant actions where statements  
4 EISs are required, the proposing agency or applicant<sup>415</sup> preparing party shall prepare the  
5 EIS, submit it for review and comments, and revise it, taking into account all critiques  
6 and responses. Consequently, the EIS process involves more than the preparation of a  
7 document; it involves the entire process of research, discussion, preparation of a  
8 statement, and review. The EIS process shall involve at a minimum:

- 9 (1)<sup>416</sup> ~~identifying~~ Identifying environmental concerns,
- 10 (2) Conducting no fewer than one EIS public scoping meeting<sup>417</sup> in the area   
11 affected by the proposed action.<sup>418</sup>
- 12 (3) ~~obtaining~~ Obtaining various relevant data,
- 13 (4) ~~conducting~~ Conducting necessary studies,
- 14 (5) ~~receiving~~ Receiving public and agency input,
- 15 (6) ~~evaluating~~ Evaluating alternatives, and
- 16 (7) ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing  
17 adverse impacts.

18 (b) To encourage early thorough and informed review of the EIS, the office shall develop a  
19 distribution list of persons and agencies with jurisdiction or expertise in certain areas  
20 relevant to various actions and make it available to the proposing agency or applicant.<sup>419</sup>

21  
22 ~~An EIS is meaningless without the conscientious application of the EIS process as a whole, and~~  
23 ~~shall not be merely a self-serving recitation of benefits and a rationalization of the proposed~~  
24 ~~action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in~~  
25 ~~the planning and decision-making process. This shall assure an early open forum for discussion~~  
26 ~~of adverse effects and available alternatives, and that the decision-makers will be enlightened to~~  
27 ~~any environmental consequences of the proposed action prior to decision making~~<sup>420, 421</sup>

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

414 Housekeeping to reflect insertion of a second paragraph, now subsection (b), in this section.

415 Clarifies that the proposing agency or the applicant must perform the following actions.

416 Housekeeping. Breaks the paragraph up and helps to see clarify the minimum elements of the EIS process. Renumbers paragraphs based on addition of public scoping meeting.

417 Requires at least one public scoping meeting for an EIS.

418 Specifies where the scoping meeting must be held.

419 Inserts and modifies a provision from section 11-200-21, Distribution, that is proposed to be deleted. This provision was the only meaningful provision remaining in section 11-200-21 after the incorporation of other edits to the section. Distribution lists should, at a minimum, be used for the distribution of the draft and final EIS, and may be referred to for consultation with knowledgeable persons and agencies throughout the environmental review process.

420 Emphasizes that the EIS process is to occur before committing to a particular course of action.

421 Moved to section 11-200-1, Purpose, to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

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## Environmental Council

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

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

- (a)<sup>422</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS without first requiring an EA, shall indicate in a concise manner:
- (1) Identification of the proposing agency or applicant;
  - (2) Identification of the accepting authority;
  - (3) The determination **to prepare an EIS**<sup>423</sup>;
  - (4) Reasons supporting the determination **to prepare an EIS**<sup>424</sup>;
  - (5) A description of the proposed action and its location;
  - (6) A description of the affected environment and include regional, location, and site maps;
  - (7) Possible alternatives to the proposed action;
  - (8) The proposing agency's or applicant's proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;
  - (9) The name, title, contact information, including the email address, physical address, and phone number of **a contact person an individual representative of the proposing agency or applicant who may be contacted** for further information.<sup>425/426</sup>
- (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>427</sup> citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft<sup>428</sup> EIS prior to the time the draft<sup>429</sup> EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. ~~At the discretion of the proposing agency or an applicant, a~~ A public scoping meeting ~~to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth~~ addressing the scope of the draft EIS ~~may~~ shall<sup>430</sup> be held within the thirty-day public review and comment period in subsection

<sup>422</sup> Creates a new paragraph and renumbers subsequent paragraphs.

<sup>423</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>424</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>425</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>426</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

<sup>427</sup> Housekeeping.

<sup>428</sup> Clarifies that the document is a draft EIS.

<sup>429</sup> Clarifies that the document is a draft EIS.

<sup>430</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

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Environmental Council

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

- 1           (~~bc~~),<sup>431</sup> provided that the proposing agency or applicant shall treat oral and written  
2           comments received at such a meeting as indicated in subsection (d)<sup>432</sup>.
- 3
- 4           (~~bc~~) Upon publication of a preparation notice an EISPN in the periodic bulletin, agencies,  
5           groups, or individuals shall have a period of thirty days from the initial ~~issue~~  
6           publication<sup>433</sup> date in which to request to become a consulted party and<sup>434</sup> to make  
7           written comments regarding the environmental effects of the proposed action. ~~Upon~~  
8           written request by the consulted party and upon good cause shown, ~~With good cause,~~  
9           the approving agency or accepting authority may extend the period for comments for a  
10          period not to exceed thirty additional<sup>435</sup> days.<sup>436</sup>
- 11
- 12          (~~cd~~) ~~Upon receipt of the request, the proposing agency or applicant shall provide the~~  
13          consulted party with a copy of the environmental assessment or requested portions  
14          thereof and<sup>437</sup> the environmental impact statement preparation notice EISPN.  
15          Additionally, the proposing agency or applicant may provide any other information it  
16          deems necessary. The proposing agency or applicant may also contact other agencies,  
17          groups, or individuals which it feels may provide pertinent additional information.<sup>438</sup>
- 18
- 19          (~~de~~) Any substantive<sup>439</sup> written<sup>440</sup> comments received by the proposing agency or applicant  
20          pursuant to this section shall be responded to in writing and as appropriate, incorporated  
21          into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS

<sup>431</sup> Housekeeping.

<sup>432</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer's interpretation recording of individual oral comments.

<sup>433</sup> Clarifies that thirty-day time period begins upon publication of the EISPN.

<sup>434</sup> Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

<sup>435</sup> Clarifies that the days are in addition to the first thirty-day period.

<sup>436</sup> Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period.

<sup>437</sup> Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.

<sup>438</sup> All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.

<sup>439</sup> Removes threshold of "substantive" and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.

<sup>440</sup> Adds written as a requirement for being responded to and reproduced in the draft EIS.

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Environmental Council

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

1 with the approving agency or accepting authority. Letters submitted **which that** contain  
 2 no comments on the project but only serve to acknowledge receipt of the document do  
 3 not require a written response. Acknowledgement of receipt of these items must be  
 4 included in the ~~final environmental assessment or~~<sup>441</sup> ~~final statement~~ **draft EIS**<sup>442</sup>. **If a**  
 5 **number of written comments are identical or very similar, the proposing agency or**  
 6 **applicant may group the comments and prepare a single standard response for each**  
 7 **group. The name of each commentor shall be included with the grouped response. One**  
 8 **representative copy of identical or very similar comments may be included rather than**  
 9 **reproducing each comment.**<sup>443</sup>

10  
 11 **(f) A written summary of oral**<sup>444</sup> **comments made at any EIS public scoping meetings**<sup>445</sup>  
 12 **identifying those persons or agencies that provided oral comments shall be included in**  
 13 **the draft EIS prior to the filing of the draft EIS with the approving agency or accepting**  
 14 **authority.**<sup>446/ 447</sup>



15  
 16 **(g) A list of those persons or agencies who were consulted with prior to filing the draft EIS**  
 17 **and had no comment shall be included in the draft EIS in a manner indicating that no**  
 18 **comment was provided.**<sup>448</sup>

19  
 20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

21

<sup>441</sup> Removes final EA requirement because a final EA may not have been prepared.

<sup>442</sup> Replaces final EIS with draft EIS, mirroring the previous sentence.

<sup>443</sup> Mirrors language inserted regarding written comments in Section 11-200-17(p) addressing voluminous and repetitive comments.

<sup>444</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>445</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).

<sup>446</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>447</sup> Addresses how proposing agencies and applicants should include oral comments received during the public scoping meeting required under this section into the draft EIS. This language mirrors the way oral comments received on the Draft EIS are to be included in Final EIS.

<sup>448</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-16 Content Requirements**

2 ~~For draft Draft~~ and final EISs, ~~The environmental impact statement the document~~<sup>449</sup> shall  
3 contain an explanation of the environmental consequences of the proposed action, ~~pursuant to~~  
4 as required in section 11-200-17<sup>450</sup>. The contents shall fully declare the environmental  
5 implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably  
6 foreseeable<sup>451</sup> consequences of the action. In order that the public can be fully informed and  
7 that the agency can make a sound decision based upon the full range of responsible opinion on  
8 environmental effects, ~~a statement~~ an EIS shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.

10

11 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
12 343-6)

13

14

15

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<sup>449</sup> Clarifies that Section section 11-200-16 applies to both draft and final EISs.

<sup>450</sup> Explicitly connects section 11-200-16 and section 11-200-17.

<sup>451</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.

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Environmental Council

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

1 **§11-200-17 Content Requirements; Draft Environmental**  
 2 **Impact Statement**

- 3 (a) The draft EIS, at a minimum, shall contain the information required in this section.  
 4
- 5 (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the  
 6 following:  
 7 (1) Brief description of the action;  
 8 (2) Significant beneficial and adverse impacts (including cumulative impacts and  
 9 secondary impacts);  
 10 (3) Proposed mitigation measures;  
 11 (4) Alternatives considered;  
 12 (5) Unresolved issues; ~~and~~  
 13 (6) Compatibility with land use plans and policies, and listing of permits or  
 14 approvals; ~~and~~<sup>452</sup>  
 15 (7) A list of relevant documents, including EAs and EISs, used to identify potential  
 16 segmentation or cumulative impacts.<sup>453</sup>  
 17
- 18 (c) The draft EIS shall contain a table of contents.  
 19
- 20 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~  
 21 the<sup>454</sup> purpose and need for the proposed action.  
 22
- 23 (e) The draft EIS shall contain a program or<sup>455</sup> project description which that shall include  
 24 the following information, but need not supply extensive detail beyond that needed for  
 25 evaluation and review of the environmental impact:  
 26 (1) A detailed map (preferably a United States Geological Survey topographic map,  
 27 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a  
 28 related regional map;  
 29 (2) ~~Statement of objectives~~ Objectives of the proposed action<sup>456</sup>;  
 30 (3) General description of the action's technical, economic, social, cultural,<sup>457</sup> and  
 31 environmental characteristics;

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<sup>452</sup> Housekeeping.

<sup>453</sup> This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.

<sup>454</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>455</sup> Clarifies that the proposed action could be either a program or a project.

<sup>456</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.


<sup>457</sup> Adds "cultural" to the characteristics, in line with Act 50 (2000).



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (4) Use of **public state or county**<sup>458</sup> funds or lands for the action;
- 2 (5) Phasing and timing of **the**<sup>459</sup> action;
- 3 (6) Summary **of** technical data, diagrams, and other information necessary to permit
- 4 an evaluation of potential environmental impact by commenting agencies and the
- 5 public; and
- 6 (7) Historic perspective. 

7

8 (f) The draft EIS shall describe in a separate and distinct section **reasonable**<sup>460</sup>

9 alternatives ~~which that~~ could attain the objectives of the action ~~regardless of cost, in~~

10 ~~sufficient detail to explain why they were rejected~~<sup>461</sup> ~~and,~~<sup>462</sup> ~~for alternatives that were~~

11 ~~eliminated from detailed study, a~~ **briefly discussion of the reasons for eliminating**

12 ~~them~~<sup>463</sup>.<sup>464</sup> The section shall include a rigorous exploration and objective evaluation of

13 the environmental impacts of all such alternative actions.<sup>465</sup> Particular attention shall be

14 given to alternatives that might enhance environmental quality or avoid, reduce, or

15 minimize some or all of the adverse environmental effects, costs, and risks **of the**

16 **action**<sup>466</sup>. Examples of alternatives include:

- 17 (1) The alternative of no action;
- 18 (2) Alternatives requiring actions of a significantly different nature ~~which that~~ would
- 19 provide similar benefits with different environmental impacts;
- 20 (3) Alternatives related to different designs or details of the proposed actions ~~which~~
- 21 ~~that~~ would present different environmental impacts;
- 22 (4) The alternative of postponing action pending further study; and,
- 23 (5) Alternative locations for the proposed **project action**<sup>467</sup>.

24 In each case, the analysis shall be sufficiently detailed to allow the comparative

25 evaluation of the environmental benefits, costs, and risks of the proposed action and

26 each reasonable alternative. **For alternatives that were eliminated from detailed study,**

27 **the section shall contain a brief discussion of the reasons for not studying those**

<sup>458</sup> **Aligns language with section 11-200-12.**

<sup>459</sup> **Housekeeping.**

<sup>460</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>461</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>462</sup> **Housekeeping.**

<sup>463</sup> ~~Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.~~

<sup>464</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>465</sup> Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.


<sup>466</sup> **Clarifies that the effects, costs, and risks are related to the action.**

<sup>467</sup> **Clarifies that alternative locations should be included for both programs and projects.**

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Environmental Council

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

- 1 **alternatives in detail.**<sup>468</sup> For any agency actions, the discussion of alternatives shall  
 2 include, where relevant, those alternatives not within the existing authority of the agency.  
 3
- 4 (g) The draft EIS shall include a description of the environmental setting, including a  
 5 description of the environment in the vicinity of the action, as it exists before  
 6 commencement of the action, from both a local and regional perspective. Special  
 7 emphasis shall be placed on environmental resources that are rare or unique to the  
 8 region and the **program or**<sup>469</sup> project site (including natural or human-made resources of  
 9 historic, **cultural,**<sup>470</sup> archaeological, or aesthetic significance); specific reference to  
 10 related **programs or**<sup>471</sup> projects, public and private, existent or planned in the region shall  
 11 also be included for purposes of examining the possible overall cumulative impacts of  
 12 such actions. Proposing agencies and applicants shall also identify, where appropriate,  
 13 population and growth characteristics of the affected area, ~~and~~ any population and  
 14 growth assumptions used to justify the **proposed**<sup>472</sup> action, ~~and determine any~~<sup>473</sup>  
 15 secondary population and growth impacts resulting from the proposed action and its  
 16 alternatives. In any event, it is essential that the sources of data used to identify, qualify,  
 17 or evaluate any and all environmental consequences be expressly noted in the draft  
 18 EIS<sup>474</sup>.  
 19
- 20 (h) The draft EIS shall include a statement description<sup>475</sup> of the relationship of the proposed  
 21 action to land use and resource<sup>476</sup> plans, policies, and controls for the affected area.  
 22 Discussion of how the proposed action may conform or conflict with objectives and  
 23 specific terms of approved or proposed land use and resource<sup>477</sup> plans, policies, and  
 24 controls, if any, for the area affected shall be included. Where a conflict or inconsistency  
 25 exists, the ~~statement~~ draft EIS<sup>478</sup> shall describe the extent to which the agency or  
 26 applicant has reconciled its proposed action with the plan, policy, or control, and the  
 27 reasons why the agency or applicant has decided to proceed, notwithstanding the  
 28 absence of full reconciliation. The draft EIS shall also contain a list of necessary   
 29 approvals, required for the action, from governmental agencies, boards, or commissions  
 30 or other similar groups having jurisdiction. The status of each identified approval shall  
 31 also be described.

<sup>468</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>469</sup> **Clarifies that both programs and projects are referred to.**

<sup>470</sup> Adds "cultural" in line with Act 50 (2000).

<sup>471</sup> **Clarifies that both programs and projects in the regional shall be considered.**

<sup>472</sup> **Parallels use of "proposed" later in the sentence and distinguishes this "action" from "action" used previously in this paragraph.**

<sup>473</sup> Housekeeping.

<sup>474</sup> Housekeeping.

<sup>475</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Uses "description" similar to other paragraphs.

<sup>476</sup> Includes natural resource plans such as water management plans.

<sup>477</sup> Includes natural resource plans such as water management plans.

<sup>478</sup> Clarifies that this applies to draft EISs.

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Environmental Council

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

- 1
- 2 (i) The draft EIS shall include a ~~statement~~ an analysis<sup>479</sup> of the probable impact of the
- 3 proposed action on the environment, and impacts of the natural or human environment
- 4 on the ~~project~~ action.<sup>480</sup> ~~which~~ This analysis<sup>481</sup> shall include consideration of all phases
- 5 of the action and consideration of all consequences on the environment; including direct
- 6 and indirect effects ~~shall be included~~<sup>482</sup>. The interrelationships and cumulative
- 7 environmental impacts of the proposed action and other related projects actions<sup>483</sup> shall
- 8 be discussed in the draft EIS. ~~It~~<sup>484</sup> ~~should be realized~~ The draft EIS should recognize<sup>485</sup>
- 9 that several actions, in particular those that involve the construction of public facilities or
- 10 structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may
- 11 well stimulate or induce secondary effects. These secondary effects may be equally
- 12 important as, or more important than, primary effects, and shall be thoroughly discussed
- 13 to fully describe the probable impact of the proposed action on the environment. The
- 14 population and growth impacts of an action shall be estimated if expected to be
- 15 significant, and an evaluation shall be<sup>486</sup> made of the effects of any possible change in
- 16 population patterns or growth upon the resource base, including but not limited to land
- 17 use, water, and public services, of the area in question. Also, if the proposed action
- 18 constitutes a direct or indirect source of pollution as determined by any governmental
- 19 agency, necessary data regarding these impacts<sup>487</sup> shall be incorporated into the EIS.
- 20 The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and
- 21 (m).
- 22
- 23 (j) The draft EIS shall include in a separate and distinct section a description of the
- 24 relationship between local short-term uses of humanity's environment and the
- 25 maintenance and enhancement of long-term productivity. The extent to which the
- 26 proposed action involves trade-offs among short-term and long-term gains and losses
- 27 shall be discussed. The discussion shall include the extent to which the proposed action
- 28 forecloses future options, narrows the range of beneficial uses of the environment, or
- 29 poses long-term risks to health or safety. In this context, short-term and long-term do not
- 30 necessarily refer to any fixed time periods, but shall be viewed in terms of the
- 31 environmentally significant consequences of the proposed action.
- 32

<sup>479</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.

<sup>480</sup> Clarifies that this sentence applies to both projects and programs.

<sup>481</sup> Stylistic change to increase readability.

<sup>482</sup> Housekeeping.

<sup>483</sup> Clarifies that both projects and programs should be considered.

<sup>484</sup> Housekeeping. (v0.1 omitted strikethrough)

<sup>485</sup> Housekeeping.

<sup>486</sup> Housekeeping.

<sup>487</sup> Clarifies what the data should be about.

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## Environmental Council

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

- 1 (k) The draft EIS shall include in a separate and distinct section a description of all  
 2 irreversible and irretrievable commitments of resources that would be involved in the  
 3 proposed action should it be implemented. Identification of unavoidable impacts and the  
 4 extent to which the action makes use of non-renewable resources during the phases of  
 5 the action, or irreversibly curtails the range of potential uses of the environment shall  
 6 also be included. The possibility of environmental accidents resulting from any phase of  
 7 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~  
 8 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~  
 9 ~~natural and cultural resources committed to loss or destruction by the action.~~  
 10 "Resources" shall be construed to also mean the natural and cultural resources  
 11 irreversibly and irretrievably committed to the action and not only to the labor and  
 12 materials committed to the action.<sup>488</sup>  
 13
- 14 (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot  
 15 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats  
 16 to public health, or other consequences adverse to environmental goals and guidelines  
 17 established by environmental response laws, coastal zone management laws, pollution  
 18 control and abatement laws, and environmental policy ~~such as that~~ including  
 19 those<sup>489</sup> found in chapters 128D (Environmental Response Law), 205A (Coastal Zone  
 20 Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D  
 21 (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F  
 22 (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste  
 23 Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used  
 24 Oil), 342L (Underground Storage Tanks), ~~342N,~~<sup>490</sup> 342P (Asbestos and Lead), and 344  
 25 (State Environmental Policy)<sup>491</sup>, HRS, shall be included, including and<sup>492</sup> those effects  
 26 discussed in other ~~actions~~ subsections of this ~~paragraph~~ section<sup>493</sup> ~~which that~~ are  
 27 adverse and unavoidable under the proposed action must be addressed in the draft  
 28 EIS<sup>494</sup>. Also, the rationale for proceeding with a proposed action, notwithstanding  
 29 unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate  
 30 what other interests and considerations of governmental policies are thought to offset  
 31 the adverse environmental effects of the proposed action. The ~~statement~~ EIS shall also  
 32 indicate the extent to which these stated countervailing benefits could be realized by  
 33 following reasonable alternatives to the proposed action that would avoid some or all of  
 34 the adverse environmental effects.  
 35

<sup>488</sup> Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

<sup>489</sup> Housekeeping.

<sup>490</sup> Repealed.

<sup>491</sup> Provides titles of each chapter referenced.

<sup>492</sup> Housekeeping.


<sup>493</sup> Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

<sup>494</sup> Housekeeping. Replaces "shall be included", which was deleted in v0.1.

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Environmental Council

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

- 1 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or  
2 reduce ~~impact~~ impacts<sup>495</sup>, including provision for compensation for losses of cultural,  
3 community, historical, archaeological, fish and wildlife resources, including the  
4 acquisition of land, waters, and interests therein. Description of any mitigation measures  
5 included in the action plan to reduce significant, unavoidable, adverse impacts to  
6 insignificant levels, and the basis for considering these levels acceptable shall be  
7 included. Where a particular mitigation measure has been chosen from among several  
8 alternatives, the measures shall be discussed and reasons given for the choice made.  
9 ~~Included~~ The draft EIS shall include, where possible ~~and appropriate~~<sup>496</sup>, should  
10 ~~be~~<sup>497</sup> specific reference to the timing of each step proposed to be taken in the any<sup>498</sup>  
11 mitigation process, what performance bonds, if any, may be posted, and what other   
12 provisions are proposed to assure that the mitigation measures will in fact be taken.  
13
- 14 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved  
15 issues and contains either a discussion of how such issues will be resolved prior to  
16 commencement of the action, or what overriding reasons there are for proceeding  
17 without resolving the problems issues<sup>499</sup>.  
18
- 19 (o) The draft EIS shall include a separate and distinct section that contains a list identifying  
20 all governmental agencies, other organizations and private individuals consulted in  
21 preparing the statement, and the identity of the persons, firms, or agency preparing the  
22 statement, by contract or other authorization, shall be disclosed.  
23
- 24 (p) The draft EIS shall include a separate and distinct section that contains:  
25 (1)<sup>500</sup> reproductions Reproductions of all substantive written comments and responses  
26 made during the ~~consultation process~~ thirty-day consultation period pursuant to  
27 section 11-200-15, and responses to those comments and a summary of any EIS  
28 public scoping meetings.<sup>501</sup> If a number of comments are identical or very similar,  
29 the proposing agency may group the comments and prepare a single standard  
30 response for each group. The name of each commentor shall be included with  
31 the grouped response. One representative copy of identical or very similar  
32 comments may be included rather than reproducing each comment<sup>502</sup> ~~;~~ and a

<sup>495</sup> Housekeeping.

<sup>496</sup> Removes redundant language.

<sup>497</sup> Housekeeping.

<sup>498</sup> Changes reference to "any" mitigation measure process that may result from the analysis.

<sup>499</sup> Aligns language throughout sentence to reference "issues" rather than "issues" and "problems".

<sup>500</sup> Introduces subsections to increase clarity.

<sup>501</sup> Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).

<sup>502</sup> Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

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Environmental Council

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

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(2) A summary of oral<sup>503</sup> comments made at any EIS public scoping meetings<sup>504</sup> that identifies those persons or agencies that provided oral comments.<sup>505</sup> A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.<sup>506</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5, 343-6)

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<sup>503</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>504</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings). This sentence replicates the one deleted from subsection (p)(1) and creates another new subsection in order to distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting.

<sup>505</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>506</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.



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## Environmental Council

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

## 1 **§11-200-18 Content Requirements; Final Environmental** 2 **Impact Statement**

3 The final EIS shall consist of:

- 4 (1) The draft EIS prepared in compliance with section 11-200-17, as<sup>507</sup> revised to  
 5 incorporate substantive<sup>508</sup> comments received during the ~~consultation and~~<sup>509</sup>  
 6 review processes;
- 7 (2) Reproductions of all ~~letters~~ written comments received ~~containing substantive~~  
 8 ~~questions, comments, or recommendations and, as applicable, summaries of any~~  
 9 ~~scoping meetings held during the ~~consultation and~~<sup>510</sup> review processes<sup>511</sup>;~~  
 10 provided that if a number of written comments are identical or very similar, one  
 11 representative copy of identical or very similar comments may be included rather  
 12 than reproducing each comment;<sup>512</sup>
- 13 (3) A list of persons, organizations, and public agencies commenting on the draft  
 14 EIS;
- 15 (4) The responses of the ~~applicant or~~ proposing agency or applicant<sup>513</sup> to each  
 16 ~~substantive question, comment, or recommendation~~ written comments<sup>514</sup>  
 17 received in the review and consultation processes, provided that if a number of  
 18 written comments are identical or very similar, the proposing agency or applicant  
 19 may group the comments and prepare a single standard response for each  
 20 group. The name of each commentor shall be included with the grouped  
 21 response;<sup>515</sup> ~~;~~<sup>516</sup>

<sup>507</sup> Connects this section with the previous section content requirements.

<sup>508</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>509</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>510</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>511</sup> Aligns language with the EISPN and draft EIS requirements.

<sup>512</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>513</sup> Place "proposing agency" before "applicant".

<sup>514</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>515</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>516</sup> Housekeeping.



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Environmental Council

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

- 1           (5)    A written summary of oral comments made at any public hearings<sup>517</sup> identifying
- 2                   those persons or agencies that provided oral comments;<sup>518</sup>
- 3           (6)    A list of those persons or agencies who were consulted with in preparing the final
- 4                   EIS and had no comment shall be included in the final EIS in a manner
- 5                   indicating that no comment was provided;<sup>519</sup>; and
- 6           (57)   The text of the final EIS ~~which shall be~~<sup>520</sup> written in a format ~~which~~ that allows the
- 7                   reader to easily distinguish changes made to the text of the draft EIS.

8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
10 343-6)

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<sup>517</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

<sup>518</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments. A list of these persons and agencies is sufficient.

<sup>519</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

<sup>520</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**§11-200-19 Environmental Impact Statement Style**

(a)<sup>521</sup> In developing the draft and final<sup>522</sup> EIS, preparers<sup>523</sup> proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government<sup>524</sup> decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail<sup>525</sup> of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement an EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project<sup>526</sup> over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

<sup>521</sup> Adding a new paragraph requires adding paragraph identifiers.

<sup>522</sup> Clarifies that this section applies to draft and final EISs.

<sup>523</sup> Removes introduction of a new term and replaces it with terms used consistently in the regulations. "proposing agencies and applicants".

<sup>524</sup> Global edit to reduce confusion regarding the meaning of "public".

<sup>525</sup> Removes "detail" because "detail" is already discussed as being commensurate with the potential for impact.

<sup>526</sup> Change "project or program" to "program or project".

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Environmental Council

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

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out in conformance with the conditions and mitigation measures presented in the EIS may require no or limited further review.<sup>527</sup>

(c) In preparing any EIS, Care care<sup>528</sup> shall be taken to concentrate on important issues and to ensure that the statement EIS<sup>529</sup> remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.

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

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<sup>527</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

<sup>528</sup> Stylistic change to provide more clarity.

<sup>529</sup> Housekeeping.

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Environmental Council

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

**§11-200-20 Filing of an Environmental Impact Statement**

(a) The proposing agency or applicant shall file the original (signed)<sup>530</sup> draft EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>531</sup>. Simultaneously, ~~a minimum number of four copies of~~<sup>532</sup> the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed)<sup>533</sup> final EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>534</sup>. Simultaneously, ~~four copies of~~<sup>535</sup> the final EIS shall be filed with the office.

~~(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.~~<sup>536</sup>

~~(d)~~<sup>537</sup> The proposing agency or applicant shall sign and date the original copy of<sup>538</sup> the draft or final EIS and shall indicate that the statement EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate.

(d) The office shall be responsible for the publication of the notice of availability of the draft and final EIS in its bulletin.<sup>539</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

<sup>530</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>531</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>532</sup> OEQC only needs one copy, not four.

<sup>533</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>534</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>535</sup> OEQC only needs one copy, not four.

<sup>536</sup> Removes the paragraph because the language is unnecessary.

<sup>537</sup> Renumbers the paragraph.

<sup>538</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>539</sup> Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-21 Distribution<sup>540</sup>**

2 The office shall be responsible for the publication of the notice of availability of the EIS in its  
3 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with  
4 jurisdiction or expertise in certain areas relevant to various actions) and make it available to the  
5 proposing agency or applicant.<sup>541</sup> and a list of public depositories, which shall include public  
6 libraries, where copies of the statements shall be available, and to the extent possible, the  
7 The<sup>542</sup> proposing agency or applicant shall make copies of<sup>543</sup> the EIS available to individuals  
8 requesting the EIS. The office's distribution list may be developed cooperatively among the  
9 applicant or proposing agency, the accepting authority, and the office; provided that<sup>544</sup> the office  
10 shall be responsible for determining the final list. The applicant or proposing agency shall  
11 directly distribute the required copies to those on the distribution list after the office has verified  
12 to the applicant or proposing agency the accuracy of the distribution list. For final statements,  
13 the agency or applicant shall give the commenter an option of requesting a copy of the final EIS  
14 or portions thereof.<sup>545/546</sup>

15  
16 [~~Eff 12/6/85; am and comp AUG 31 1996~~] (Auth: HRS ~~§343-5, 343-6~~) (Imp: HRS ~~§343-3, 343-5,~~  
17 ~~343-6~~)

<sup>540</sup> Deletes section because, due to the availability of the bulletin online, it is no longer necessary to specify the distribution process in such detail and to require distribution of paper copies of draft and final EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations. The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20, Filing, and the requirement for the office to produce and make available a distribution list has been slightly modified and moved to subsection (b) in section 11-200-14, General Provisions.

<sup>541</sup> Removes the requirement for proposing agencies or applicants to verify a distribution list with the office. Electronic distribution of the documents and online availability of a distribution list developed by the office meet the objectives of this requirement more efficiently.

<sup>542</sup> Removes outdated depositories requirement as all documents and determinations are available online to anyone.

<sup>543</sup> Removes unnecessary language. The EIS will primarily be made available electronically, whereas "copies" implies a paper version.

<sup>544</sup> Housekeeping.

<sup>545</sup> Removes outdated requirement to provide the commenter with an option to request the document or a portion of it as all documents and determinations are available online to anyone.

<sup>546</sup> Modernizes the distribution process. The office is required under chapter 343 to produce and distribute the bulletin. This process is now electronic and all published environmental review documents and determinations are available freely online. Because information is now available online, the concern that agencies and members of the public would not have notice of or access to the documents without a hard copy of the documents is no longer applicable.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-22 Public Review of Environmental Impact**  
 2 **Statements and Addenda to Draft Environmental Impact**  
 3 **Statements Public Review and Response Requirements**  
 4 **for Draft EISs and Addenda**<sup>547</sup>

- 5 (a) Public review shall not substitute for early and open discussion with interested persons  
 6 and agencies;<sup>548</sup> concerning the environmental impacts of a proposed action. Review of  
 7 the draft<sup>549</sup> EIS, shall serve to provide the public and other agencies an opportunity to  
 8 discover the extent to which a proposing agency or applicant has examined  
 9 environmental concerns and available alternatives.
- 10
- 11 (b) The period for public review and for submitting written comments shall commence ~~as of~~  
 12 from the date that<sup>550</sup> notice of availability of the draft EIS is initially issued in the periodic  
 13 bulletin and shall continue for a period of forty-five days. Written comments to the  
 14 approving agency or accepting authority, whichever is applicable, with a copy of the  
 15 comments to the ~~applicant or~~ proposing agency or applicant<sup>551</sup>, shall be received or  
 16 postmarked to the approving agency or accepting authority, within ~~said the~~<sup>552</sup> forty-five-  
 17 day comment<sup>553</sup> period. Any comments outside of the forty-five day comment period  
 18 need not be ~~considered or~~ responded to nor considered<sup>554</sup>.
- 19
- 20 (c) The proposing agency or applicant shall respond ~~in writing~~<sup>555</sup> to the comments received  
 21 or postmarked during the forty-five-day review period and incorporate the comments and  
 22 responses in the final EIS. The response to comments shall include:
- 23 (1) Point-by-point discussion of the validity, significance, and relevance of  
 24 comments; and
- 25 (2) Discussion as to how each comment was evaluated and considered in ~~planning~~  
 26 the proposed action preparing the final EIS<sup>556</sup>.
- 27 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.  
 28 Response letters reproduced in the text of the final EIS<sup>557</sup> The response shall indicate

<sup>547</sup> Rephrases title so that it is clearer that the whole section is about draft EISs.

<sup>548</sup> Housekeeping.

<sup>549</sup> Clarifies that the document is a draft EIS.

<sup>550</sup> Housekeeping."

<sup>551</sup> Place "proposing agency" before "applicant".

<sup>552</sup> Housekeeping.

<sup>553</sup> Clarifies that the forty-five days is for the comment period.

<sup>554</sup> Stylistic change to increase readability.

<sup>555</sup> Removes phrase because the response must be in the final EIS, which is written.

<sup>556</sup> Focus on how the comment is addressed in the final EIS rather than just action.

<sup>557</sup> Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 verbatim changes that have been made to the text of the draft EIS. The response shall  
 2 describe the disposition of significant environmental issues raised (e.g., revisions to the  
 3 proposed **project action**<sup>558</sup> to mitigate anticipated impacts or objections, etc.). In  
 4 particular, the issues raised when the **applicant's or** proposing agency's **or applicant's**<sup>559</sup>  
 5 position is at variance with recommendations and objections raised in the comments  
 6 shall be addressed in detail, giving reasons why specific comments and suggestions  
 7 were not accepted, and factors of overriding importance warranting an override of the  
 8 suggestions. If a number of comments are identical or very similar, the proposing agency  
 9 or applicant may group the comments and prepare a single standard response for each  
 10 group. The comments must be attached to the final EIS regardless of whether the  
 11 agency or applicant believes they merit individual discussion in the body of the final  
 12 EIS.<sup>560</sup>

13  
 14 (d) An addendum document<sup>561</sup> to a draft ~~environmental impact statement~~ EIS shall  
 15 reference the original draft ~~environmental impact statement~~ EIS to which<sup>562</sup> it attaches  
 16 ~~to~~<sup>563</sup> and comply with all applicable filing, public review, and comment requirements set  
 17 forth in subchapter 7.

18  
 19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

20  
 21  
 22

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<sup>558</sup> Provides clarity that revisions may be made to a project or a program.

<sup>559</sup> Place "proposing agency's" before "applicant's".

<sup>560</sup> Because the responses are included in the final EIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome **and** without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a, and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in **the** identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>561</sup> Removes the word document as it is unnecessary.

<sup>562</sup> Housekeeping.

<sup>563</sup> Housekeeping.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 §11-200-23 Acceptability**

- 2 (a) Acceptability of ~~a statement~~ a final EIS<sup>564</sup> shall be evaluated on the basis of whether the  
 3 ~~statement~~ final EIS<sup>565</sup>, in its completed form, represents an informational instrument  
 4 which that fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,<sup>566</sup>  
 5 and adequately discloses and describes all identifiable environmental impacts and  
 6 satisfactorily responds to review comments.  
 7
- 8 (b) A ~~statement~~ final EIS<sup>567</sup> shall be deemed to be an acceptable document by the  
 9 accepting authority or approving agency only if all of the following criteria are satisfied:  
 10 (1) The procedures for assessment, consultation process, review, and the  
 11 preparation and submission of the ~~statement~~ EIS, from proposal of the action to  
 12 publication of the final EIS,<sup>568</sup> have all been completed satisfactorily as specified  
 13 in this chapter;  
 14 (2) The content requirements described in this chapter have been satisfied; and  
 15 (3) Comments submitted during the review process have received responses  
 16 satisfactory to the accepting authority, or approving agency, and have been  
 17 appropriately<sup>569</sup> ~~incorporated in~~ into the statement final EIS<sup>570</sup>, and comments  
 18 and responses have been appended to the final EIS<sup>571</sup>.  
 19
- 20 (c) For actions proposed by agencies, the proposing agency may request the office to make  
 21 a recommendation regarding the acceptability or non-acceptability of the EIS. In all  
 22 cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>572</sup> authorized  
 23 representative shall have final authority to accept the EIS. In cases involving only county  
 24 funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>573</sup> authorized  
 25 representative shall have final authority to accept the EIS. The accepting authority shall  
 26 take prompt measures to determine the acceptability or non-acceptability<sup>574</sup> of the  
 27 proposing agency's ~~statement~~ EIS. In the event that the action involves ~~both~~ state and  
 28 county lands ~~or~~, state or county funds, or both state and county lands and state and

---

<sup>564</sup> Clarifies that the document is a final EIS.

<sup>565</sup> Clarifies that the document is a final EIS.

<sup>566</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

<sup>567</sup> Clarifies that the document is a final EIS.

<sup>568</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

<sup>569</sup> Recognizes that not all comments are incorporated into an EIS.

<sup>570</sup> Clarifies that the document is a final EIS.

<sup>571</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.

<sup>572</sup> Housekeeping.

<sup>573</sup> Housekeeping.

<sup>574</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            **county**<sup>575</sup> funds,<sup>576</sup> the governor or ~~an~~ the governor's<sup>577</sup> authorized representative shall  
2            have final authority to accept the EIS.

3  
4            (d)<sup>578</sup> Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate  
5            accepting authority with both the proposing agency and the office. For any non-accepted  
6            EIS, the notice shall contain specific findings and reasons for non-acceptance. The office  
7            shall publish notice of the determination of acceptance or non-acceptance in the periodic  
8            bulletin in accordance with section 11-200-3. Acceptance of a required statement shall  
9            be a condition precedent to the use of state or county lands or funds in implementing the  
10           proposed action.

11  
12           (de) For actions proposed by applicants requiring approval from an agency, the applicant or  
13           accepting authority, which is the approving agency,<sup>579</sup> may request the office to make a  
14           recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If  
15           the office decides to make a recommendation, it shall submit the recommendation to the  
16           applicant and the approving agency within the ~~thirty-day~~<sup>580</sup> period requiring an approving  
17           agency to determine the acceptability of the final EIS ~~and described in section 343-5(c),~~  
18           HRS<sup>581</sup>. Upon acceptance or non-acceptance by the approving agency, the agency shall  
19           notify the applicant of its determination, and provide specific findings and reasons. The  
20           agency shall also provide a copy of this determination to the office for publication of a  
21           ~~notice~~<sup>582</sup> in the periodic bulletin. Acceptance of the required EIS shall be a condition  
22           precedent to approval of the request and commencement of the proposed action. ~~An~~  
23           ~~approving agency shall take prompt measures to determine the acceptability or non-~~  
24           ~~acceptability of the applicant's statement.~~<sup>583</sup> The agency shall notify the applicant and  
25           the office of the acceptance or non-acceptance of the final EIS within thirty days of the  
26           final EIS submission to the agency<sup>584, 585</sup> provided that the thirty-day period may, at the  
27           request of the applicant, be extended ~~at the request of the applicant~~<sup>586</sup> for a period not to  
28           exceed fifteen days. The request shall be made to the accepting authority in writing.

575 Provides clarity that "state and county" applies to both funds and lands.

576 Clarifies cases situations where a proposed action has mixed state and county lands or funds or both lands and funds.

577 Housekeeping.

578 Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

579 Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

580 Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.

581 Unnecessary language.

582 Housekeeping.

583 Redundant when read with the following sentence that sets forth a timeline.

584 Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.

585 Housekeeping.

586 Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Upon receipt of an applicant's written<sup>587</sup> request for an extension of the thirty-day  
 2 acceptance period, the accepting authority shall notify the office and applicant in writing  
 3 of its decision to grant or deny the request. The notice shall be accompanied by a copy  
 4 of the applicant's request. An extension of the thirty-day acceptance period shall not be  
 5 allowed granted<sup>588</sup> merely for the convenience of the accepting authority. In the event  
 6 that the agency fails to make a determination of acceptance or non-acceptance for of<sup>589</sup>  
 7 the statement EIS<sup>590</sup> within thirty days of the receipt of the final EIS, then the statement  
 8 shall be deemed accepted.

9  
 10 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision  
 11 shall take the form of a revised draft EIS ~~document~~<sup>591</sup> which shall fully address the  
 12 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the  
 13 changes made. The requirements for filing, distribution, publication of availability for  
 14 review, acceptance or non-acceptance, and notification and publication of acceptability  
 15 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,<sup>592</sup>  
 16 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised  
 17 draft EIS and the subsequent revised final EIS<sup>593</sup> shall be evaluated for acceptability on  
 18 the basis of whether it satisfactorily addresses the findings and reasons for non-  
 19 acceptance.

20  
 21 (fg) A proposing agency or applicant may withdraw an EIS by simultaneously<sup>594</sup> sending a  
 22 ~~letter~~ written notification<sup>595</sup> to the office and to the accepting authority<sup>596</sup> informing the  
 23 office of the proposing<sup>597</sup> agency's or applicant's withdrawal. Subsequent resubmittal of  
 24 the EIS shall meet all requirements for filing, distribution, publication, review,  
 25 acceptance, and notification as a ~~new~~ draft<sup>598</sup> EIS.

26  
 27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 28  
 29

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587 Connects to the previous sentence, clarifying that the request shall be made in writing.  
 588 Mirrors language within the provision.  
 589 Housekeeping.  
 590 Housekeeping.  
 591 Housekeeping.  
 592 Proposed to be deleted.  
 593 Added revised final EIS as the next step following a revised draft EIS.  
 594 Requires the office and accepting authority to be notified of the withdrawal at the same time.  
 595 Removes the requirement for a letter and simply requires written notification, such as by email.  
 596 Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).  
 597 Clarifies that the agency withdrawing the proposal is the proposing agency.  
 598 Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

## 1 Subchapter 8 Appeals

2 **§11-200-24 Appeals to the Council**

3 An applicant, within sixty days after a<sup>599</sup> non-acceptance determination by the approving agency  
 4 under section 11-200-23<sup>600</sup> of a statement a final EIS<sup>601</sup> by an agency<sup>602</sup>, may ~~to choose to~~<sup>603/604</sup>  
 5 appeal the non-acceptance to the council, which within ~~thirty~~ sixty<sup>605</sup> days of receipt of the  
 6 appeal, shall notify the applicant of its determination to affirm the approving agency's non-  
 7 acceptance or to reverse it<sup>606</sup>. The council chairperson shall include the appeal on the agenda  
 8 of the council meeting immediately following the chairperson's receipt of the appeal. The council  
 9 shall be deemed to have received the appeal on the date of the meeting for which the appeal is  
 10 agendized.<sup>607</sup> In any affirmation or reversal of an appealed non-acceptance, the council shall  
 11 provide the applicant and the agency with specific findings and reasons for its determination.  
 12 The agency shall abide by the council's decision. An applicant may seek judicial review of the  
 13 council's determination under chapter 91, HRS.<sup>608</sup> Pursuing an appeal by council does not  
 14 abrogate an applicant's option under section 343-7(e), HRS, to bring judicial action.<sup>609/610</sup>

15  
 16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 17  
 18

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<sup>599</sup> Housekeeping.

<sup>600</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>601</sup> Clarifies that the document is a final EIS.

<sup>602</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>603</sup> ~~"Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.~~

<sup>604</sup> Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.

<sup>605</sup> Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

<sup>606</sup> Clarifies the Council's determination.

<sup>607</sup> Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

<sup>608</sup> Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council's decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council's procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council's decision under chapter 91-14, HRS.

<sup>609</sup> Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the cCouncil is unable to obtain quorum after an applicant appeals to the cCouncil.

<sup>610</sup> Judicial review of the appeal is now addressed in the previous sentence.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 9 National Environmental Policy Act

2 **§11-200-25 National Environmental Policy Act Actions:**  
3 **Applicability to Chapter 343, HRS**

4 When ~~the situation occurs where~~<sup>611</sup> a certain action will be subject both to the National  
5 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
6 Public Law 94-83; 42 U.S.C. § sections<sup>612</sup> 4321-4347) and chapter 343, HRS, the following shall  
7 occur:

8 (1) The applicant or agency, upon discovery of its proposed action being subject to  
9 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>613</sup>,  
10 shall notify the responsible federal agency, the office, and any agency with a  
11 definite interest in the action (as prescribed by chapter 343, HRS) ~~of the~~  
12 ~~situation.~~<sup>614</sup>

13  
14 (2) Where a federal agency determines that the proposed action is exempt<sup>615</sup> from  
15 review under the NEPA, the determination does not automatically constitute an  
16 exemption for the purposes of this chapter. In such cases, state and county  
17 agencies remain responsible for compliance with this chapter. However, the  
18 federal exemption may be considered in the state or county agency  
19 determination.<sup>616</sup>

20  
21 (3) Where a federal agency issues a FONSI and concludes that an statement EIS is  
22 not required under the NEPA, the this determination does not automatically  
23 constitute compliance with this chapter. In such cases, state and county agencies  
24 remain responsible for compliance with this chapter. However, the federal FONSI  
25 may be considered in the state or county agency determination.<sup>617</sup>

26

<sup>611</sup> Housekeeping.

<sup>612</sup> Housekeeping.

<sup>613</sup> Housekeeping.

<sup>614</sup> Housekeeping.

<sup>615</sup> The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

<sup>616</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

<sup>617</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

- 1           (24) The National Environmental Policy Act NEPA<sup>618</sup> requires that draft<sup>619</sup> statements  
2           EISs<sup>620</sup> be prepared by the responsible federal agency. In the case of actions for  
3           which an EIS pursuant to the NEPA has been prepared by the responsible  
4           federal agency, the draft and final federal statements EIS may be submitted to  
5           comply with this chapter,<sup>621</sup> so long as the federal EIS satisfies the EIS content  
6           requirements of this chapter and is not found to be inadequate under the NEPA  
7           by a court; by the council on environmental quality (CEQ) (or is at issue in pre-  
8           decision<sup>622/623</sup> referral to CEQ) under the NEPA regulations; or by the  
9           administrator of the United States Environmental Protection Agency under  
10           section 309 of the Clean Air Act, 41 U.S.C. 1857.<sup>624</sup> The responsible federal  
11           agency's supplemental EIS requirements shall apply in the these<sup>625</sup> cases in  
12           place of this chapter's supplemental EIS requirements.<sup>626</sup>  
13  
14           (5)<sup>627</sup> When the responsibility of preparing an EIS is delegated to a state or county  
15           agency, this chapter shall apply in addition to federal requirements under the  
16           National Environmental Policy Act NEPA<sup>628</sup>. The office and state or  
17           county<sup>629</sup> agencies shall cooperate with federal agencies to the fullest extent  
18           possible to reduce duplication between federal and state requirements. This  
19           cooperation, to the fullest extent possible, shall include joint environmental  
20           impact statements EISs with concurrent public review and processing at both  
21           levels of government. Where federal law has environmental impact statement  
22           EIS requirements in addition to but not in conflict with this chapter, the office and  
23           agencies shall cooperate in fulfilling the requirements so that one document shall  
24           comply with all applicable laws. Where the NEPA process requires earlier or

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<sup>618</sup> Housekeeping.

<sup>619</sup> Language is applicable to draft and final.

<sup>620</sup> Housekeeping.

<sup>621</sup> Based on Massachusetts' statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses this chapter's content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

<sup>622</sup> Housekeeping.

<sup>623</sup> Housekeeping.

<sup>624</sup> Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.

<sup>625</sup> Housekeeping.

<sup>626</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>627</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

<sup>628</sup> Housekeeping.

<sup>629</sup> Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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more stringent public review and processing, that process shall satisfy this chapter so that duplicative consultation or review do not occur.<sup>630</sup>

(36) In all actions where the use of state land or funds is proposed, the final ~~statement~~ EIS shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed<sup>631</sup>, the final ~~statement~~ EIS shall be submitted to the mayor, or an authorized representative. The final ~~statement~~ EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the ~~Environmental Protection Agency or~~<sup>632</sup> responsible federal agency.

(47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section<sup>633</sup> shall satisfy chapter 343, HRS, and no other ~~statement~~ EIS for the proposed action shall be required.

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

<sup>630</sup> Addresses, for example, situations where a federal agency's regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

<sup>631</sup> Clarifies the condition that requires the mayor or the mayor's authorized representative to be the accepting authority.

<sup>632</sup> Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

<sup>633</sup> Changes language to "this section" instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Proposed New Subchapter X Programmatic EISs

2 **~~Proposed §11-200-XX Programmatic Environmental~~**  
3 **~~Impact Statements~~<sup>634/635</sup>**

4 ~~(a) — Proposing agencies may prepare a PEIS on the adoption of a comprehensive~~  
5 ~~plan prepared in accordance with relevant laws. Impacts of individual actions proposed~~  
6 ~~to be carried out in conformance with these adopted plans and regulations and the~~  
7 ~~thresholds or conditions identified in the PEIS may require no or limited further review.~~

8  
9 ~~(b) — Approving agencies may allow applicants to prepare a PEIS on the adoption of a~~  
10 ~~comprehensive plan prepared in accordance with relevant laws. Impacts of individual~~  
11 ~~actions proposed to be carried out in conformance with these adopted plans and~~  
12 ~~regulations and the thresholds or conditions identified in the PEIS may require no or~~  
13 ~~limited further review.~~

14  
15 ~~(c) — Upon acceptance of a final programmatic PEIS:<sup>636</sup>~~

16 ~~(1) — If a PEIS evaluates project-level issues such as precise project footprints or~~  
17 ~~specific design details, no further compliance with this chapter is required if a~~  
18 ~~subsequent proposed action will be carried out in conformance with the~~  
19 ~~conditions and thresholds established for such actions in the PEIS.~~

20 ~~(2) — Further chapter 343, HRS, environmental review must be prepared if a~~  
21 ~~subsequent proposed action was not addressed in the PEIS or the subsequent~~  
22 ~~proposed action exceeds the thresholds evaluated in the PEIS, and the~~  
23 ~~subsequent action may have a significant impact on the environmental. Further~~  
24 ~~review may be in the form of an EIS, EA, or exemption, for specific components~~  
25 ~~of the proposal.~~

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<sup>634</sup> ~~Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.~~

<sup>635</sup> ~~Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.~~

<sup>636</sup> ~~Housekeeping.~~

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **~~Proposed §11-200-XX Content Requirements; Draft~~**  
2 **~~Programmatic Environmental Impact Statement~~<sup>637/638</sup>**

3 ~~(a) The content requirements for a PEIS shall be the same as those for an EIS set~~  
4 ~~forth in subchapter 7, with the understanding that the level of detail in a PEIS may be~~  
5 ~~less than that of a project-level<sup>639</sup> EIS. The level of detail in a PEIS must be sufficient to~~  
6 ~~allow informed choice among planning-level alternatives and to develop broad mitigation~~  
7 ~~strategies. A PEIS should examine the interaction among proposed projects or plan~~  
8 ~~elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also~~  
9 ~~includes an examination of alternatives.~~

10  
11 ~~(b) The PEIS may be broader and more general than a project-level EIS and omit~~  
12 ~~evaluating project-level issues that are not yet ready for decision at the planning level, or~~  
13 ~~it may evaluate project-level issues such as precise project footprints or specific design~~  
14 ~~details.~~

15  
16 ~~(c) A PEIS should discuss the logic and rationale for the choices advanced. It may~~  
17 ~~also include an assessment of specific impacts, if such details are available,<sup>640</sup> and~~  
18 ~~specific mitigation measures. It may be based on conceptual information in some cases.~~  
19 ~~It may discuss in general terms the constraints and sequences of events likely to result~~  
20 ~~in<sup>641</sup> any narrowing of future options. It may present and analyze in general terms~~  
21 ~~hypothetical scenarios that are likely to occur.~~  
22

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<sup>637</sup> Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.

<sup>638</sup> Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

<sup>639</sup> Uses consistent language to distinguish between project-level EISs and program-level EISs.

<sup>640</sup> Housekeeping.

<sup>641</sup> Increases readability.

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Environmental Council

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

1 Subchapter 10 Supplemental Statements

2 **§11-200-26 Supplemental EIS<sup>642</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  
12 prepared and reviewed as provided by this chapter.<sup>643</sup> unless:

13  
14 (1) The project has changed substantively in the following characteristics: size,  
15 scope, use, location or timing, among other things, which may have a significant  
16 effect.<sup>644</sup>

17 (2) New information indicating significant effects, which was not known and could not  
18 have been known at the time the EIS was accepted as complete, becomes  
19 available.<sup>645</sup>

20  
21 (b) In the case of newly discovered information, the decision to require preparation of a  
22 supplemental EIS must be based on the following criteria:

23 (1) The information can be from any source.

24 (2) The information must be newly discovered. It cannot be information that could  
25 have been included in comments filed in the original draft EIS or final EIS.

26 (3) The information must be important, indicating probably<sup>646</sup>significant  
27 environmental impacts.

28 (4) The information must not have been addressed in the prior EIS, or must have  
29 been inadequately addressed.<sup>647</sup>

30  
31 (c) As long as there is no change in a proposed action or new information indicating  
32 significant effects resulting in individual or cumulative impacts not originally disclosed,

<sup>642</sup> Clarifies in the title that this is about supplemental EISs (to distinguish it this section from those regarding regular EISs and programmatic EISs).

<sup>643</sup> Restores original SEIS section language.

<sup>644</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

<sup>645</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

<sup>646</sup> Housekeeping.

<sup>647</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge could can be used as a reason to require a supplemental EIS.

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Environmental Council

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

1           the ~~statement~~ EIS associated with that action shall be deemed to comply with this  
2           chapter.

3

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

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Environmental Council

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

1 **§11-200-27 Supplemental EIS<sup>648</sup> Determination of**  
2 **Applicability**

3 The accepting authority or approving agency in coordination with the original accepting authority  
4 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
5 period of five years has elapsed since the acceptance of the final EIS, and the ~~project or~~  
6 program program or project<sup>649</sup> has not substantially commenced, the accepting authority or  
7 approving agency shall formally ~~re-evaluate~~ the need for a supplemental ~~statement~~ EIS and  
8 make a determination of whether a supplemental ~~statement~~ EIS<sup>650</sup> is required. A written  
9 summary of this evaluation and the<sup>651</sup> This determination will be submitted to the office for  
10 publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public  
11 review supplemental ~~statements~~ EISs whenever the proposed action for which ~~a~~ an<sup>652</sup>  
12 ~~statement~~ EIS was accepted has been modified to the extent that new or different  
13 environmental impacts are anticipated. A supplemental ~~statement~~ EIS shall be warranted when  
14 the scope of an action has been substantially increased, when the intensity of environmental  
15 impacts will be increased, when the mitigating measures originally planned ~~are will~~ not to be  
16 implemented, or where new circumstances or evidence have brought to light different or likely  
17 increased environmental impacts not previously dealt with.

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
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<sup>648</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>649</sup> Changes “project or program” to “program or project” to be consistent with the definition of action.

<sup>650</sup> Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

<sup>651</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

<sup>652</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-28 Supplemental EIS<sup>653</sup> Contents**

2 The contents of the supplemental ~~statement~~ EIS shall be the same as required by this chapter  
3 for the EIS and may incorporate by reference unchanged material from the same; however, in  
4 addition, it shall fully document the proposed changes from the original EIS, including changes  
5 in ambient conditions or available information that have a bearing on a proposed action or its  
6 impacts, the positive and negative aspects of these changes, and shall comply with the content  
7 requirements of section 11-200-16 as they relate to the changes.

8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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<sup>653</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

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Environmental Council

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

1 **§11-200-29 Supplemental EIS<sup>654</sup> Procedures**

2 The requirements of the thirty-day consultation, ~~file~~ public notice **filing**<sup>655</sup>, distribution, the forty-  
3 five-day public review, comments and response, and acceptance procedures, shall be the same  
4 for the supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.

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

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<sup>654</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>655</sup> **Stylistic change to increase readability.**



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Environmental Council

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

**Proposed §11-200-XX<sup>656</sup> Retroactivity**

(a) The rules shall apply immediately upon taking effect.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200 (2018), provided that:

(1) For EAs, if the draft EA was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and has not received a determination within a period of five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018). All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200 (2018).

(2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018).

(3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

(d) All exemptions issued after adoption of HAR chapter 11-200 (2018) must comply with HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a period of five years after the adoption of HAR chapter 11-200 (2018), after which time the agency must revise its list and seek concurrence from council.<sup>657</sup>

<sup>656</sup> Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or undergoing it at the time the revised rules take effect.

<sup>657</sup> Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action.

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Environmental Council

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

1 Subchapter 11 Severability

2 **§11-200-30 Severability**

3 If any provision of this chapter or the application thereof to any person or circumstance is held  
4 invalid, the invalidity shall not affect other provisions or applications of this chapter which can be  
5 given effect without the invalid provision or application; and to this end, the provisions of this  
6 chapter are declared to be severable.

7  
8 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6, 343-8)  
9

10 **Note**

11 Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact  
12 Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]  
13 Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the  
14 repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996  
15 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995,  
16 November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu  
17 Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii  
18 Tribune-Herald and Molokai Dispatch on October 12, 1995.

19  
20 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It  
21 has not been compiled.

22  
23



# Auwahi Wind

September 29, 2017

Via E-Mail ([oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov)) and U.S. Mail  
Department of Health, State of Hawaii  
State Environmental Council  
Attention: Director Scott Glenn  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Re: Comments on Proposed Revisions to HAR Chapter 11-200

Dear Director Glenn and Members of the State Environmental Council:

We appreciate the opportunity to comment on the preliminary draft of proposed revisions to the Hawai'i Administrative Rules Chapter 11-200 regarding procedures, content requirements, criteria, and definitions for implementing Hawai'i Revised Statutes Chapter 343. Below are comments which are directed to the most recent version (Version 0.2) posted on the Council's website and strike-out/underlining which is repeated below is as it currently appears in Version 0.2. In addition, where we have suggested specific edits in a section, we have also input that edit into the on-line version.

§ 11-200-2 Definitions and Terminology

"Action" means any program or project to be initiated by an agency or applicant.

**Comment** – No revisions are currently proposed to this definition. However, it may be helpful to add sentences explaining that "action" does not mean every individual permit or approval involved in a program or project, but generally refers to the whole of the program or project even though only one aspect of such program or project may trigger Ch. 343 review. For example, if a commercial development project is located on private land, but requires an access road to be built upon land classified as conservation district, the whole project must be reviewed under Ch. 343, not just the access road.

**Suggested edit** - Add the following sentence to the definition: "The term "action" refers to the whole activity being approved, which may be subject to several discretionary approvals by a number of governmental agencies, as long as one of those approvals is within the categories identified in § 11-200-6. The term "action" does not mean each separate governmental approval."

"Substantial commencement" means that a an applicant ~~project or program~~ action has reached the stage where its last approval has been granted and has advanced to the point where financial commitments are in place and scheduled and design is essentially complete, or, for ~~government programs~~ agency action for which an approval is not required, the ~~project or program~~ project or program has advanced to the point where financial commitments are in place and scheduled and design is essentially complete.

**Comment** – Inclusion of the "last approval" seems unnecessary and may be too stringent, especially since granting of approvals are not in the control of any private developer. It appears that the point of including this new definition is to ensure that a project is to the point where it would not be expected to be abandoned or reversed or substantially changed after the project has been reviewed in a Ch. 343 document. Accordingly, we believe that a project can be said to have reached substantial commencement if at least one approval has been granted and the project "has advanced to the point where financial commitments are in place [] and design is essentially complete."

**Suggested edit** – Delete "its last approval has been granted and" and replace with "at least one agency approval has been granted and the project" and delete "and scheduled" which is confusing.

"Supplemental statement EIS " means an ~~additional environmental impact statement~~ updated EIS prepared for an action for which ~~a statement an EIS~~ was previously accepted, but which has yet to progress to substantial commencement and since acceptance the action, circumstances, or anticipated impacts have changed substantively in size, scope, intensity, use, location, or timing, among other things.

**Comment** – We agree with proposed revisions.

**Suggested edit** - For clarity, consider inserting the word "action" in the following phrase: "... but which action has yet to progress ..."

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

(a) An EISPN, including one resulting from an agency authorizing the preparation of an EIS 248 without first requiring an EA, shall indicate in a concise manner:

(1) Identification of the proposing agency or applicant;

(2) Identification of the accepting authority;

(3) The determination to prepare an EIS;

(4) Reasons supporting the determination to prepare an EIS;

(5) A description of the proposed action and its location;

(6) A description of the affected environment and include regional, location, and site maps;

(7) Possible alternatives to the proposed action;

(8) The proposing agency's or applicant's proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;

(9) The name, title, contact information, including the email address, physical address, and phone number of a contact person an individual representative of the proposing agency or applicant who may be contacted for further information.

- (a**b**) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), ~~and other~~ citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft EIS prior to the time the draft EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. ~~At the discretion of the proposing agency or an applicant, a~~ A public scoping meeting ~~to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth~~ addressing the scope of the draft EIS ~~may shall~~ be held within the thirty-day public review and comment period in subsection (b**c**), ~~provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).~~
- (b **c**) Upon publication of ~~a preparation notice an~~ EISPN in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue publication date ~~in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown,~~ With good cause, the approving agency or accepting authority may extend the period for comments for a period not to exceed additional thirty days.
- (c **d**) ~~Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice EISPN. Additionally, the proposing agency or applicant may provide any other information it~~

~~deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.~~

- (~~d~~ e) Any substantive written comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted ~~which~~ that contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the ~~final environmental assessment or final statement~~ draft EIS. If a 5 number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response. One representative copy of identical or very similar comments may be included rather than reproducing each comment.
- (f) A written summary of oral comments made at any EIS public scoping meetings identifying those persons or agencies that provided oral comments shall be included in the draft EIS prior to the filing of the draft EIS with the approving agency or accepting authority.
- (g) A list of those persons or agencies who were consulted with prior to filing the draft EIS and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.

**Comment** – It would be helpful to clarify (either here or in § 11-200-29) whether preparation of a SEIS also requires publication of an EISPN and scoping. An EISPN and scoping should not be necessary in the SEIS context because (1) the original EIS has already been scoped and (2) written evaluation of whether a SIES is needed is required to be published under proposed revised § 11-200-27. An EISPN and scoping would be duplicative and may cause unnecessary delay and expenditure of resources. Please also clarify whether use of a NEPA EIS as permitted by § 11-200-25 requires publication of an EISPN and scoping. EISPN/scoping should be unnecessary in the NEPA context because the NEPA document will have its own public notice requirements.

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

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

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

- (2) Where a federal agency determines that the proposed action is exempt from review under the NEPA, the determination does not automatically constitute an exemption for the purposes of this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county agency determination.
- (3) Where a federal agency issues a FONSI and concludes that an ~~statement~~ EIS is not required under the NEPA, ~~the~~ this determination does not automatically constitute compliance with this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal FONSI may be considered in the state or county agency determination.
- (24) The ~~National Environmental Policy Act~~ NEPA requires that ~~draft statements~~ EISs be prepared by the responsible federal agency. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal agency, the draft and final federal ~~statements~~ EIS may be submitted to comply with this chapter, so long as the federal EIS satisfies the EIS content requirements of this chapter and is not found to be inadequate under the NEPA by a court; by the council on environmental quality (CEQ) (or is at issue in predecision referral to CEQ) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857. The responsible federal agency's supplemental EIS requirements shall apply in ~~the~~ these cases in place of this chapter's supplemental EIS requirements.
- (5) When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the ~~National Environmental Policy Act~~ NEPA . The office and state or county agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint ~~environmental impact statements~~ EISs with concurrent public review and processing at both levels of government. Where federal law has ~~environmental impact statement~~ EIS requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws. Where the NEPA process requires earlier or more stringent public review and processing, that process shall satisfy this chapter so that duplicative consultation or review do not occur.
- (36) In all actions where the use of state land or funds is proposed, the final ~~statement~~ EIS shall be submitted to the governor or an authorized



representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed, the final statement EIS shall be submitted to the mayor, or an authorized representative. The final statement EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the ~~Environmental Protection Agency~~ or responsible federal agency.

- (47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section shall satisfy chapter 343, HRS, and no other statement EIS for the proposed action shall be required.

**Comment** – Please clarify whether separate Ch. 343 notices, EISPN, scoping, etc. are required when a state or local agency uses a NEPA EIS to satisfy Ch. 343 for the same project.

§ 11-200-26 Supplemental EIS General Provisions

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

- ~~(1) — The project has changed substantively in the following characteristics: size, scope, use, location or timing, among other things, which may have a significant effect; or~~
- ~~(2) — New information indicating significant effects, which was not known and could not have been known at the time the EIS was accepted as complete, becomes available.~~

- ~~(b) — In the case of newly discovered information, the decision to require preparation of a supplemental EIS must be based on the following criteria:~~

- ~~(1) — The information can be from any source.~~
- ~~(2) — The information must be newly discovered. It cannot be information that could have been included in comments filed in the original draft EIS or final EIS.~~
- ~~(3) — The information must be important, indicating probably significant environmental impacts.~~

~~(4) The information must not have been addressed in the prior EIS, or must have been inadequately addressed.~~

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

**Comment** – In order to be consistent with the proposed revised definitions of “substantial commencement” and “supplemental EIS,” please clarify that once a project is completed, a revision to some aspect(s) of the project will generally not trigger a SEIS as long as the project as a whole is not changing. For example, consider if a commercial development that is fully built out pursuant to an accepted EIS which was triggered because one of its access roads was on conservation district land, applies five years later to expand a parking lot associated with the project (and constructing that parking lot alone would not trigger Ch. 343). Presumably, this situation would not require a SEIS unless the expansion of the parking lot was such a substantive change that it made the whole development “an essentially different action.” In the first and second sentences of 11-200-26(a), please clarify what is meant by “intensity.” The phrase “among other things” is completely open-ended and undefined, and may lead to uncertainty and litigation; we suggest deleting the phrase both times where it appears Subsection (a). The third sentence of 11-200-26(a) is referring to the original, accepted EIS for the action in question, therefore, the phrase “that was changed” should be changed to “that was accepted.” Subsection (c) is not necessary since the proposed revisions to Subsection (a) already specify the standard for determining when a Supplemental EIS is required.

**Suggested edits** – Make the following changes in Subsection (a): “An EIS that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, ~~among other things~~. . . . no supplemental EIS for that proposed action shall be required, to the extent that the action has reached substantial commencement and has not changed substantively in size, scope, intensity, use, location or timing, ~~among other things~~. If there is any change in any of these characteristics which may have a significant effect, the original statement that was ~~changed~~ accepted shall . . .” Also delete Subsection (c).

#### § 11-200-27 Supplemental EIS Determination of Applicability

The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a period of five years has elapsed since the acceptance of the final EIS, and the project or program program or project has not substantially commenced, the accepting authority or approving agency shall formally re-evaluate the need for a supplemental statement EIS and make a determination of whether a supplemental statement EIS is required. A written summary of this evaluation and the ~~This~~ determination will be submitted to the office for

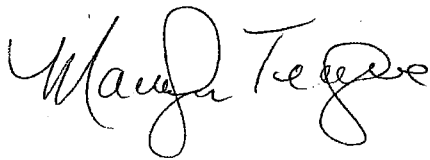
publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental ~~statements~~ EISs whenever the proposed action for which a ~~an~~ statement EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental ~~statement~~ EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned ~~are~~ will not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

**Comment** – Reassessment after only five years may be too soon for certain types of actions. In addition, please see comments above related to the definition of “substantial commencement.” We suggest a longer period of time.

\* \* \*

We again thank you for this opportunity to comment on the important work the Council is undertaking to update and clarify Chapter 11-200. Please feel free to call us if you have any questions regarding our comments.

Sincerely,



Marilyn Teague | Director, Environmental, Permitting, Compliance and Safety  
Sempra Infrastructure, LLC | HQ-12N1 | 488 8th Ave | San Diego, CA 92101  
office 619-696-4910 | [MTeague@SempraGlobal.com](mailto:MTeague@SempraGlobal.com)



Michael T. Munekiyo  
PRESIDENT  
Karlynn K. Fukuda  
EXECUTIVE VICE PRESIDENT  
Mark Alexander Roy  
VICE PRESIDENT  
Tessa Munekiyo Ng  
VICE PRESIDENT

September 29, 2017

Scott Glenn, Director  
State of Hawai'i  
Department of Health  
Office of Environmental Quality Control  
235 South Beretania Street, Suite 702  
Honolulu, Hawai'i 96813

SUBJECT: Proposed Revisions to Hawai'i Administrative Rules, Chapter 11-200 Hawai'i Environmental Impact Statement Rules – Version 0.2, September 5, 2017

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Dear Mr. Glenn:

Thank you for the opportunity to review and provide comments on the proposed revisions to the Hawai'i Administrative Rules (HAR), Chapter 11-200 Hawai'i Environmental Impact Statement Rules – Version 0.2, dated September 5, 2017. We appreciate the Office of Environmental Quality Control (OEQC) and Environmental Council's (EC) efforts in this area. Munekiyo Hiraga is a planning consulting firm and as part of our work, we prepare Environmental Assessments and Environmental Impact Statements on behalf of agencies and applicants. We offer the following comments and recommendations for your consideration on Version 0.2 of the EIS rules. We have outlined our comments by section of the rules to assist with the review.

**HAR 11-200-2, Definitions**

1. Discretionary Consent/Substantial Commencement: We note that there are definitions provided for “discretionary consent” and “substantial commencement” which relate to when a Supplemental Environmental Impact Statement (SEIS) may be required. We wondered if these definitions are consistent with how the Courts have defined “discretionary consent” and “substantial commencement” in relation to vested rights. We are also unclear who would determine whether or not substantial commencement has occurred.
2. EIS Public Scoping Meeting: The definition for EIS Public Scoping Meeting notes that it is a meeting, “that invites the participation of ...individuals reasonably believed to be potentially affected by the proposed action (including those who

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might not be in accord with the proposed action)". What constitutes an invitation? The word "invite" may suggest individual notices be sent to agencies, groups, individuals and it may be difficult to identify all those "reasonably believed to be potentially affected". We offer more generic language for consideration which would maintain the purpose of the meeting, such as a meeting "in which agencies, citizen groups, and the general public are notified of the opportunity by the preparing party in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS".

#### **HAR 11-200-4 (a), Identification of Approving Agency and Accepting Authority and HAR-200-23 (c), Acceptability**

1. The proposed rule revisions provide that where both State and County lands or funds are used, the Governor is the Accepting Authority for EIS. Is there a particular reason why this provision was added? 11-200-4(c) provides for protocol when there is more than one (1) agency with jurisdiction. There may be cases when the County would be considered the more appropriate agency based on the factors identified in 11-200-4(c). For example, the project may be a County project on County land but also involves connection to a State ROW, which would be a use of State lands. In this case, the County would be the more appropriate Accepting Authority, but the proposed revision would designate the Governor as the Accepting Authority. This could also raise home rule questions for Counties.

#### **HAR 11-200-6 (b)(3), Applicant Actions**

1. This section notes that actions by Counties initiating a comprehensive review of a general plan or amendment thereof may be excepted from the need to prepare an EA. Does this also include County-initiated amendments to the general plan that are not done as part of a comprehensive review? For example, would a County-initiated amendment to change a community plan designation for a particular property continue to be exempted as the Hawai'i Revised Statutes (HRS) Chapter 343-5 (6) currently allows?

#### **HAR 11-200-7(1), Multiple or Phase Applicant or Agency Actions**

1. The revisions add "lacks independent utility" to the definition of "phased actions". Should a definition of "independent utility" be added to 11-200-2, Definitions?

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### **HAR 11-200-8(a)(9),(11), Exemption Notices**

1. This section notes that agency activities that do not rise to the level of being a program or project shall not be considered subject to Chapter 343. Is this meant to be specific to Agency actions or could there be similar situations where Applicant activities may have a trigger which also does not rise to the level of being a program or project?
2. The proposed rules note that zoning variances, except shoreline set-back variances, are eligible for exemption. What would the procedure be when a particular agency's exemption list is more restrictive than this section? For example, the County of Maui's exemption list currently includes "zoning variances except use, density, height, parking requirements, and shoreline setback variances". Would the EC be the body to make the determination?
3. One of the criteria for affordable housing qualifying for the exemption is if it is "consistent with existing county residential or mixed use zoning classification". We are suggesting revisions to instead use "permitted by county zoning classification". In Maui County there is pyramid zoning, so affordable housing is permitted in commercial and industrial zones as well as residential and mixed use zones.
4. We are concerned that questions may arise as to what constitutes "affordable housing"? Is it a project with 100 percent affordable housing or a project with 51 percent affordable housing? What if the affordable housing is part of a mixed-use project with some commercial component? We recommend adding a definition of "affordable housing" to 11-200-2 to provide some clarity.

### **HAR 11-200-9(c), Assessment of Agency Actions and Applicant Actions**

1. We note that the term "reasonable range of alternatives" is used to clarify that not all possible alternatives must be analyzed. Could this raise questions about what constitutes "reasonable range"? Current practice in Hawai'i is that a preferred alternative is evaluated in detail in an EA following completion of alternatives assessment of reasonable alternatives. We are concerned that the current proposed language suggests that the reasonable range of alternatives now be fully analyzed in detail in terms of potential impacts, in EA documents. This would substantially increase the cost and time of preparing/processing environmental review documents as it would require that technical studies (such as engineering and drainage reports) be prepared to assess a range of alternatives vs. just the preferred alternative.

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2. Also, we were unclear how “cause to be analyzed” differs from “analyze” and would request additional clarification for this section.

#### **HAR 11-200-14(b), General Provisions**

1. The proposed rules note that OEQC shall develop a distribution list. The footnote notes that the list should at a minimum, be used for distribution of DEIS and FEIS. We suggest that the footnote language be included in the text itself rather than as a footnote.

#### **HAR 11-200-17(k), Content Requirements; Draft Environmental Impact Statement**

1. A definition is provided here for Resources. Should the Resources definition be placed in Section 11-200-2?

#### **HAR 11-200-24, Appeals to the Council**

1. The language notes that the appeal of an Approving Agency’s decision shall be considered received on the date of the Council meeting for which the meeting is agendized. We are concerned that there could be instances where the Council may not be meeting regularly due to lack of quorum or sufficient number of appointed members. In this instance, an Applicant’s appeal may not be decided upon in a timely manner if the 60-day time frame for a determination is not triggered until the Council meeting date. We suggest consideration of the inclusion of language whereby should the Council be unable to act upon an Applicant’s request for appeal within a determined period of days that the Council may take no position on the request and an appeal of the Accepting Authority decision can proceed through judicial review.

#### **HAR 11-200-25(4), National Environmental Policy Act Actions: Applicability to Chapter 343, HRS**

1. We are curious to understand if there is a reason the language is specific for NEPA EIS documents and does not include NEPA EAs?

#### **11-200-27, Supplemental EIS General Provisions**

1. The proposed rules note that if a period of five (5) years has elapsed since acceptance of a FEIS and the project has not substantially commenced, the Accepting Authority shall formally evaluate the need for a SEIS. The current proposed language does not provide for guidelines as to how an Accepting



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Authority is to evaluate the need for a SEIS. This can become a subjective process, depending on who the Accepting Authority is (i.e., board or commission). We would recommend that language be added to clarify and provide direction to the Accepting Authority on the SEIS evaluation process.

2. We also recommend consideration of a longer time frame given that legal challenges and entitlement processes can often prevent projects from substantially commencing within five (5) years of FEIS acceptance. The EIS review is required to be completed first before other entitlements can proceed.

Thank you again for the opportunity to provide our input and suggestions. We appreciate the EC and your efforts to update the HAR. We look forward to continued involvement in the process and the review of the next draft. Should you have any questions on our comments and suggestions, please contact us at (808) 244-2015.

Very truly yours,



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Tessa Munekiyo Ng, AICP  
Vice President

TMN:tn

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**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Working Draft of Proposed Revisions to Hawai'i  
2 Administrative Rules Title 11 Department of Health  
3 Chapter 200 Environmental Impact Statement Rules  
4 **Version 0.2 September 5, 2017**

5  
6 Prepared with the assistance of the Office of Environmental Quality Control (OEQC).

7  
8 Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council  
9 (EC) members and the general public.

10  
11 **Background**

12 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter  
13 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled  
14 in 1996. An amendment to add an exemption class for the acquisition of land for affordable  
15 housing was added in 2007, although it has not been compiled with the rest of the rules.

16  
17 On July 27, 2017, the EC Permitted Interaction Group submitted [Version 0.1](#) to the EC for its  
18 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional  
19 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline  
20 document and to serve as a foundation for consulting with affected agencies and the general  
21 public. The EC approval concluded the work of the Permitted Interaction Group.

22  
23 Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version  
24 0.3 in October 2017 that could potentially become the proposed draft for which it conducts  
25 formal public hearings to adopt into rules.

26  
27 **How to Read Version 0.2**

28 Versions 0.1 and 0.2 use a "Ramseyer-lite" style of formatting to indicate proposed changes to  
29 HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules.  
30 Text with a strikethrough is language proposed for removal from the rules. A footnote  
31 accompanies the proposed change to provide context.

32  
33 In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes  
34 made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as  
35 well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version  
36 0.2 may have multiple footnotes following a given change. These footnotes are separated by a  
37 forward slash ("/") to help distinguish the different footnotes.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 Major Topics Addressed in Version 0.2**

2 Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In  
3 addition to the numerous revisions to modernize grammar and enhance readability  
4 (“housekeeping”), the following major topics are addressed in Version 0.2:

- 5 ● Clarifying definitions and aligning them with statutory definitions.
- 6 ● Incorporating cultural practices in accordance with Act 50 (2000).
- 7 ● Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e.,  
8 *The Environmental Notice*).
- 9 ● Aligning the “triggers” requiring environmental review for agencies and applicants with  
10 statutory language.
- 11 ● Clarifying the environmental review process as it applies to states of emergency and  
12 emergency actions.
- 13 ● Clarifying roles and responsibilities of proposing agencies and approving agencies in the  
14 environmental review process.
- 15 ● Revising the requirements and procedures for creating exemption lists and exempting  
16 actions from further environmental review.
- 17 ● Modernizing submittals, deadlines, comment and response, and distribution to recognize  
18 electronic communication.
- 19 ● Revising the comment and response requirements and procedures for environmental  
20 assessments (EAs) and environmental impact statements (EISs).
- 21 ● Clarifying style standards for EAs and EISs, including when an action is a program or a  
22 project.
- 23 ● Clarifying significance criteria thresholds for determining whether to issue an exemption  
24 notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- 25 ● Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- 26 ● Revising requirements for conducting scoping meetings following an EISPN.
- 27 ● Clarifying content requirements for Draft and Final EISs.
- 28 ● Revising procedures for appealing non-acceptance to the EC.
- 29 ● Revising procedures for joint federal-state environmental review.
- 30 ● Revising the requirements and procedures for determining when to do a Supplemental  
31 EIS, including aligning the requirements with statute and case law.
- 32 ● Adding a retroactivity section for actions that have already completed environmental  
33 review or are undergoing review at the time the rules would be enacted.

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## Environmental Council

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

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

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Environmental Council

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

1 **HAR Chapter 11-200 Environmental Impact**  
2 **Statement Rules**

3 Subchapter 1 Purpose

4 **§11-200-1 Purpose**

5 Chapter 343, Hawaii Revised Statutes, (HRS)<sup>1</sup>, establishes a system of environmental review at  
6 the state and county levels ~~which~~ that<sup>2</sup> shall ensure that environmental concerns are given  
7 appropriate consideration in decision making along with economic and technical considerations.  
8 The purpose of this chapter is to provide agencies and persons with procedures, specifications  
9 of regarding the<sup>3</sup> contents of environmental assessments and environmental impact statements,  
10 and criteria and definitions of statewide application.

11  
12 Environmental assessments and environmental impact statements are meaningless without the  
13 conscientious application of the environmental review process as a whole, and shall not be  
14 merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies  
15 and applicants shall ensure that EAs and EISs are prepared at the earliest opportunity in the  
16 planning and decision-making process. This shall assure an early open forum for discussion of  
17 adverse effects and available alternatives, and that the decision-makers will be enlightened to  
18 any environmental consequences of the proposed action prior to decision making<sup>4, 5</sup>

19  
20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-1, 343-6)

21  
22  
23

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<sup>1</sup> Housekeeping.

<sup>2</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>3</sup> Increases clarity.

<sup>4</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

<sup>5</sup> Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 2 Definitions and Terminology

2 **§11-200-2 Definitions and Terminology**

3 As used in this chapter:

4

5 "Acceptance" means a formal determination of acceptability<sup>6</sup> that the document required to be  
6 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental  
7 impact statement (EIS),<sup>7</sup> ~~adequately describes identifiable environmental impacts, and~~  
8 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~  
9 ~~by section 11-200-23.~~<sup>8</sup> Acceptance does not mean that the action is environmentally sound or  
10 unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
11 determination of acceptance is required prior to implementing or approving the action.  
12

13 "Accepting authority" means the final<sup>9</sup> official who<sup>10</sup> or agency that ~~determines the acceptability~~  
14 ~~of the EIS document~~ makes the determination that a final EIS required to be filed pursuant to  
15 chapter 343, HRS, fulfills the definitions and requirements of an EIS<sup>11</sup>.  
16

17 "Action" means any program or project to be initiated by an agency or applicant.  
18

19 "Addendum" means an attachment to a draft ~~environmental assessment~~ EA<sup>12</sup> or draft  
20 ~~environmental impact statement~~ EIS<sup>13</sup>, prepared at the discretion of the proposing agency, or  
21 applicant, or<sup>14</sup> approving agency, and distinct from a supplemental EIS statement<sup>15</sup>, for the  
22 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,  
23 or clarifications to information already contained in the draft ~~environmental assessment~~ EA<sup>16</sup> or  
24 the draft ~~environmental impact statement~~ EIS already filed with the office.  
25

<sup>6</sup> Housekeeping. Removes redundant language.

<sup>7</sup> Housekeeping.

<sup>8</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.

<sup>9</sup> Removes "final" because it does not contribute additional meaning to the definition.

<sup>10</sup> Housekeeping.

<sup>11</sup> Clarifies that the role of the accepting authority ~~role is about~~ to determine the acceptability ~~about~~ of a final EIS.

<sup>12</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>13</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>14</sup> Clarifies that the approving agency does not always prepare the EA or EIS.

<sup>15</sup> Removes redundant language. An EIS is by definition a statement.

<sup>16</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 "Agency" means any department, office, board, or commission of the state or county
- 2 government ~~which~~ that is part of the executive branch of that government.
- 3
- 4 "Applicant" means any person ~~who~~ that<sup>17</sup>, pursuant to statute, ordinance, or rule, officially
- 5 requests approval from an agency for a proposed action.
- 6
- 7 "Approval" means a discretionary consent required from an agency prior to ~~actual~~<sup>18</sup>
- 8 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~
- 9 ~~recommendation from an agency for which judgment and free will may be exercised by the~~
- 10 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~
- 11 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~
- 12 ~~by law or rule without the use of judgment or discretion.~~<sup>19</sup>
- 13
- 14 "Approving agency" means an agency that issues an approval prior to ~~actual~~<sup>20</sup> implementation
- 15 of an applicant<sup>21</sup> action, determines the need for an EA or EIS, and issues the exemption,
- 16 FONSI, or acceptance determination.<sup>22</sup> The approving agency may be is also the<sup>23</sup> accepting
- 17 authority for an applicant final EIS.<sup>24</sup>
- 18
- 19 "Concurrence" means the discretionary consent of the council to an agency exemption list.<sup>25</sup>
- 20
- 21 "Council" or "EC" means the environmental council.
- 22
- 23 "Cumulative impact" means the impact on the environment ~~which~~ that results from the
- 24 incremental impact of the action when added to other past, present, and reasonably foreseeable
- 25 future actions regardless of what agency or person undertakes such other actions. Cumulative
- 26 impacts can result from individually minor but collectively significant actions taking place over a
- 27 period of time.
- 28
- 29

17 Stylistic change because a "person" as defined by the rules is not always a human.

18 Does not add meaning to sentence so removing the word.

19 Remove Removes "discretionary consent" from the definition and made makes it a standalone definition that mirrors the statute.

20 Does not add meaning to sentence so removing the word.

21 Approving agencies are only in the case of applicants.

22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

23 Clarifies that the approving authority is always the accepting authority for applicants.

24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

25 Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is not an approval because it does not apply to a specific ~~project~~ action.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 "Discretionary consent" means a consent, sanction, or recommendation from an agency for  
 2 which judgment and free will may be exercised by the issuing agency, as distinguished from a  
 3 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an  
 4 agency upon a given set of facts, as prescribed by law or rule without the use of judgment or  
 5 discretion.<sup>26</sup>

6  
 7 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a  
 8 proposing agency or an approving agency for public review and comment when that agency  
 9 anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)<sup>27</sup> determination.

10  
 11 "Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological  
 12 effects (such as the effects on natural resources and on the components, structures, and  
 13 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic  
 14 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate  
 15 or delayed<sup>28</sup>. Effects may also include those effects resulting from actions ~~which~~ that may have  
 16 both beneficial and detrimental effects, even if on balance the agency believes that the effect  
 17 will be beneficial.

18  
 19 "EIS public scoping meeting" means a meeting open to the public held by the proposing agency  
 20 or applicant, or their representative, within the thirty-day public consultation period described in  
 21 section 11-200-15, ~~inviting that invites~~ the participation of those agencies, citizen groups, and  
 22 individuals reasonably believed to be potentially affected by the proposed action (including  
 23 those who might not be in accord with the proposed action), to assist the preparing party in  
 24 determining the range of actions, alternatives, impacts, and proposed mitigation measures to be  
 25 considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.  
 26 Suggestions made at the EIS public scoping meeting are considered to be advisory and not  
 27 mandatory.<sup>29</sup>

28  
 29 "Emergency action" means an action to prevent or mitigate loss or damage to life, health,  
 30 property, or essential public services in response to a sudden unexpected occurrence  
 31 demanding such immediate action. ~~a project or program that normally would be subject to~~  
 32 chapter 343, HRS, but is not because of a state of emergency declared by the governor.<sup>30/31</sup>

<sup>26</sup> Definition removed from "approval" and made standalone. Mirrors HRS § section 343-2, HRS,  
 language and expands on ministerial definition (which is existing language in HAR § section 11-200-2).

<sup>27</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
 housekeeping purposes, unless otherwise noted.

<sup>28</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

<sup>29</sup> Removes language unnecessary to the definition of "EIS public scoping meeting" that creates doubts  
about the value of participating in the the EIS scoping meeting process.

<sup>30</sup> Redefines an emergency action to be an action undertaken during a particular emergency proclamation  
issued by the governor.

<sup>31</sup> Re-inserting language that was deleted in v0.1 and moving distinction between actions taken in  
response to an emergency without a governor's proclamation of a state of emergency and actions taken  
during a governor proclaimed state of emergency in section 11-200-5, Agency Actions.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,  
2 and social conditions that exist within the area affected by a proposed action, including land,  
3 human and animal communities, **health**,<sup>32</sup> air, water, minerals, flora, fauna, ambient noise, and  
4 objects of historic, cultural,<sup>33</sup> or aesthetic significance.

5  
6 "Environmental assessment" or "EA"<sup>34</sup> means a written evaluation ~~to determine whether an~~  
7 ~~action may have a significant environmental effect. that serves to provide sufficient evidence~~  
8 ~~and analysis to determine whether an action may have a significant environmental effect.~~<sup>35</sup> ~~It~~  
9 ~~together Together~~<sup>36</sup> with a FONSI, **an EA**<sup>37</sup> satisfies chapter 343, HRS, when no EIS is  
10 necessary,<sup>38</sup> and facilitates preparation of an EIS when no **EIS is determined to be**<sup>39</sup> necessary  
11 and the **Chapter 343, HRS, may be satisfied without an EA when**, based on an agency's  
12 judgment and experience, the agency concludes that the proposed action may have a  
13 significant effect on the environment **and therefore proceeds directly to or authorizes an**  
14 **applicant to proceed directly to the preparation of an EIS.**<sup>40</sup>

15  
16 "~~Environmental impact~~" means ~~an effect of any kind, whether immediate or delayed, on any~~  
17 ~~component of the environment.~~<sup>41</sup>

18  
19 "Environmental impact statement,"<sup>42</sup> "statement,"<sup>43</sup> or "EIS" means an informational document  
20 prepared in compliance with chapter 343, HRS, ~~and this chapter and which fully complies with~~  
21 ~~subchapter 7 of this chapter~~<sup>42</sup>. The initial statement EIS<sup>43</sup> filed for public review shall be referred  
22 to as the draft ~~environmental impact statement EIS~~ and shall be distinguished from the final  
23 ~~environmental impact statement EIS~~, which is the document that has incorporated the public's  
24 comments and the responses to those comments. The final ~~environmental impact statement~~  
25 EIS is the document that shall be evaluated for acceptability by the ~~respective~~<sup>44</sup> accepting  
26 authority.

32 **Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".**

33 **Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).**

34 Adds common abbreviation for use throughout the rules.

35 Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.

36 **Stylistic change to increase readability.**

37 **Stylistic change to increase readability.**

38 **Stylistic change to increase readability.**

39 **Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).**

40 **Clarifies that an EA is not always required prior to beginning preparation of an EIS.**

41 Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.

42 Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

43 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

44 Unnecessary language so recommend removing.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

- 1 "EIS preparation notice,"<sup>45</sup> or "EISPN"<sup>46</sup>, or "preparation notice" means a determination based  
 2 on an environmental assessment that the subject that an<sup>47</sup> action may have a significant effect  
 3 on the environment and, therefore, will require the preparation of an environmental impact  
 4 statement EIS, based on either an EA or an agency's judgment and experience that the  
 5 proposed action may have a significant effect on the environment and therefore authorizes the  
 6 preparation of an EIS without first requiring an EA.<sup>48/49/50/51</sup>  
 7  
 8 "Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to  
 9 prepare environmental assessments, for a class of actions, based on a determination by the  
 10 proposing agency or approving agency that the class of actions will probably have a minimal or  
 11 no significant effect on the environment.<sup>52</sup>  
 12  
 13 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a  
 14 public government<sup>53</sup> action, or the agency with the power of approval, in the case of a private  
 15 action, when it has determined that the proposed project is an exempt or emergency project  
 16 action<sup>54</sup>.  
 17  
 18 "Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by  
 19 a proposing agency or an approving agency following the public review and comment period for  
 20 the draft ~~environmental assessment~~ EA and in support of either a FONSI or a preparation notice  
 21 an EISPN<sup>55</sup>, determination; or the ~~environmental assessment submitted by a proposing agency~~  
 22 ~~or an approving agency subject to a public consultation period when such an agency clearly~~  
 23 ~~determines at the outset that the proposed action may have a significant effect and hence will~~  
 24 ~~require the preparation of a statement.~~<sup>56</sup>

---

<sup>45</sup> Housekeeping.

<sup>46</sup> Adds common abbreviation for use throughout the rules.

<sup>47</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>48</sup> Adds the direct-to-EIS pathway to the definition of an EISPN.

<sup>49</sup> Removes unnecessary language describing the process of making an EISPN determination while preserving the meaning of the definition.

<sup>50</sup> Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency's judgment and experience chapter 343-5(e), HRS.

<sup>51</sup> Moved under "E" because EISPN is used more frequently than "preparation notice".

<sup>52</sup> Removes the definition because the concept of "classes of actions" is removed in section 11-200-8.

<sup>53</sup> Global change that clarifies that "public" refers to "government" actions. "Public" is used throughout the regulations to refer to the general citizenry.

<sup>54</sup> Aligns with defined term "emergency action".

<sup>55</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>56</sup> Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency's judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an  
2 EA that an action not otherwise exempt ~~does will~~<sup>57</sup> not have ~~the potential for~~<sup>58</sup> a significant  
3 effect on the environment and therefore does not require the preparation of an EIS. A FONSI is  
4 required prior to implementing or approving the action.<sup>59</sup>

5  
6 "Impacts" means the same as "effects".<sup>60</sup>

7  
8 "Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

9  
10 "National Environmental Policy Act" or "NEPA"<sup>61</sup> means the National Environmental Policy Act  
11 of 1969, Public Law 91-190, 42 U.S.C. § sections 4321-4347, as amended.

12  
13 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
14 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
15 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
16 ~~A negative declaration is required prior to implementing or approving the action.~~<sup>62</sup>

17  
18 "Office" means the office of environmental quality control.

19  
20 "Periodic bulletin" means the document required by section 343-3, HRS, and published by the  
21 office.

22  
23 "Person" includes any individual, partnership, firm, association, trust, estate, private corporation,  
24 or other legal entity other than an agency.

25  
26 "Power generating facility" means:

- 27 1. A new, fossil-fueled, electricity-generating facility, where the electrical output  
28 rating of the new equipment exceeds 5.0 megawatts; or  
29 2. An expansion in generating capacity of an existing, fossil-fueled, electricity-  
30 generating facility, where the incremental electrical output rating of the new  
31 equipment exceeds 5.0 megawatts.<sup>63</sup>

32  
33  
34  
35  

---

<sup>57</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>58</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>59</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>60</sup> Adds a reference for anyone looking up the word "impacts" to direct them to the word "effects".

<sup>61</sup> Adds common abbreviation for use throughout the rules.

<sup>62</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>63</sup> Adds definition from HRS § 343-2.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 ~~"Preparation notice," or "EIS preparation notice,"<sup>64</sup> or "EISPN"<sup>65</sup> means a determination based~~  
 2 ~~on an environmental assessment that the subject that an<sup>66</sup> action may have a significant effect~~  
 3 ~~on the environment and, therefore, will require the preparation of an environmental impact~~  
 4 ~~statement EIS, based on either an EA or an agency's judgment and experience that the~~  
 5 ~~proposed action may have a significant effect on the environment and therefore authorizes the~~  
 6 ~~preparation of an EIS without first requiring an EA.<sup>67</sup>~~

7  
 8 "Primary impact,"<sup>1</sup> or "primary effect,"<sup>1</sup> or "direct impact,"<sup>1</sup> or "direct effect" means effects ~~which~~  
 9 ~~that~~ are caused by the action and occur at the same time and place.

10  
 11 A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a  
 12 number of separate actions in a given geographic area which, if considered singly, may have  
 13 minor impacts, but if considered together may have significant impacts; (2) a sequence of  
 14 actions contemplated by a single agency or applicant; (3) separate actions having generic or  
 15 common impacts; (4) an entire program or plan having wide application or restricting the range  
 16 of future alternative policies or projects, including new or significant changes to existing land use  
 17 plans, development plans, zoning regulations, or agency comprehensive resource management  
 18 plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)  
 19 implementation of a single project or program over a large geographic area.<sup>68/69</sup>

20  
 21 "Proposing agency" means any state or county agency that proposes an action under chapter  
 22 343, HRS.<sup>70</sup>

23  
 24 "Secondary impact,"<sup>1</sup> or "secondary effect,"<sup>1</sup> or "indirect impact,"<sup>1</sup> or "indirect effect" means an  
 25 effects effect which that is are caused by the action and are later in time or farther removed in  
 26 distance, but are is still reasonably foreseeable.<sup>71</sup> Indirect An indirect effects effect may include  
 27 a growth-inducing effects effect<sup>72</sup> and other effects related to induced changes in the pattern of

<sup>64</sup> Housekeeping.

<sup>65</sup> Adds common abbreviation for use throughout the rules.

<sup>66</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>67</sup> Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".

<sup>68</sup> Adds a definition to go along with new sections on how to do environmental review for an action this that is a "program". Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.

<sup>69</sup> This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatic EIS", but rather provides more specificity in the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.

<sup>70</sup> Added definition because the term is used frequently throughout the rules.

<sup>71</sup> Grammar change to singular to mirror the definition of effect or impact as a singular object.

<sup>72</sup> Stylistic change reflect changes made to previous sentence.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 land use, population density or growth rate, and related effects on air, and water,<sup>73</sup> and other  
 2 natural systems, including ecosystems.  
 3  
 4 "Significant effect" or "significant impact" means the sum of effects on the quality of the  
 5 environment, including actions that irrevocably commit a natural resource, curtail the range of  
 6 beneficial uses of the environment, are contrary to the state's State's<sup>74</sup> environmental policies or  
 7 long-term environmental goals and guidelines as established by law, ~~or~~<sup>75</sup> adversely affect the  
 8 economic welfare,<sup>76</sup> ~~or~~ social welfare, or<sup>77</sup> cultural practices of the community and State,<sup>78</sup> or  
 9 are otherwise set forth in section 11-200-12 ~~of this chapter~~<sup>79</sup>.  
 10  
 11 "Substantial commencement" means that a an applicant<sup>80</sup> project or program action<sup>81</sup> has  
 12 reached the stage where its last approval<sup>82</sup> has been granted and has advanced to the point  
 13 where financial commitments are in place and scheduled and design is essentially complete, or,  
 14 for government programs an agency action<sup>83</sup> for which an approval is not required, the project  
 15 or program program or project<sup>84</sup> has advanced to the point where financial commitments are in  
 16 place and scheduled and design is essentially complete.<sup>85</sup>  
 17  
 18  
 19  
 20

<sup>73</sup> Housekeeping.

<sup>74</sup> Housekeeping.

<sup>75</sup> Housekeeping.

<sup>76</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>77</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>78</sup> Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added "cultural practices" to the list of adverse effects that could constitute "significance". "Of the community and State" is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of "significant effect".

<sup>79</sup> Housekeeping.

<sup>80</sup> Clarifies the distinction between applicant actions and government actions.

<sup>81</sup> Increases readability.

<sup>82</sup> As defined in section 343-2, HRS, an approval is a discretionary consent.

<sup>83</sup> Removes introduction of new term "government", and replaces with synonym "agency". Further clarifies that this definition applies to both programs and projects.

<sup>84</sup> Global edit changing word order of "project or program" to "program or project" to align with the definition of "action" in section 343-2, HRS.

<sup>85</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law. In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than \$20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Supplemental ~~statement~~ EIS" means an additional environmental impact statement updated  
2 EIS<sup>86</sup> prepared for an action for which ~~a statement~~ an EIS was previously accepted, but which  
3 has yet to progress to substantial commencement and since acceptance the action,  
4 circumstances, or anticipated impacts have<sup>87</sup> changed substantively in size, scope, intensity,  
5 use, location, or timing, among other things.  
6  
7 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.<sup>88</sup>  
8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)  
10  
11

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<sup>86</sup> Housekeeping.

<sup>87</sup> Incorporates substantial commencement into the definition and emphasizes that changes can apply to the proposed action, the environment, or knowledge (ties to supplemental sections).

<sup>88</sup> Adds definition from HRS § section 343-2, HRS.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 3 Periodic Bulletin

2 **§11-200-3 Periodic Bulletin**

3 (a) The office shall inform the public through the publication of a periodic bulletin of the  
4 following:

- 5 (1) Notices filed by agencies<sup>89</sup> of the availability of ~~environmental assessments~~ EAs
- 6 and appropriate addendum documents for review and comments;
- 7 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or
- 8 not required;
- 9 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and
- 10 appropriate addendum documents for review and comments;
- 11 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
- 12 (5) Other notices required by the rules of the council.

13  
14 ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin~~  
15 ~~shall also be sent to the state library system and other depositories or clearinghouses.<sup>90</sup>~~

16  
17 (c <sup>b</sup><sup>91</sup>) The bulletin shall be issued on the eighth and twenty-third days of each month. All  
18 agencies and applicants submitting exemption notices<sup>92</sup>, draft ~~environmental~~  
19 ~~assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNs<sup>93</sup>,  
20 ~~environmental impact statements~~ EISs, acceptance or non-acceptance determinations,  
21 addenda, supplemental ~~statements~~ EISs, supplemental ~~preparation notices~~ EISPNs,  
22 revised documents, withdrawals, and other notices required to be published in the  
23 bulletin shall submit such documents or notices to the office before the close of business  
24 ~~eight~~ four<sup>94</sup> ~~working~~ business<sup>95</sup> days prior to the issue date. In case the deadline falls on  
25 a state holiday or ~~nonworking~~ non-business<sup>96</sup> day, the deadline shall be the next ~~working~~  
26 business<sup>97</sup> day.

89 Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

90 This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

91 Housekeeping. Renumbers paragraphs.

92 Aligns with section 11-200-8.

93 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

94 OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

95 Housekeeping. For computing time see section 1-29, HRS.

96 Housekeeping.

97 Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (d c) All submittals to the office for publication in the bulletin shall be accompanied by a  
 2 completed informational form ~~which~~ that provides whatever information the office needs  
 3 to properly notify the public. The information requested may include the following: the  
 4 title of the action; the islands affected by the proposed action; tax map key numbers;  
 5 street addresses; nearest geographical landmarks; latitudinal and longitudinal  
 6 coordinates or other geographic data<sup>98</sup>; applicable permits, including discretionary  
 7 approvals requiring preparation of the document under chapter 343, HRS;<sup>99</sup> whether the  
 8 proposed action is an agency or an applicant action; a citation of the applicable federal  
 9 or state statutes requiring preparation of the document; the type of document prepared;  
 10 the names, addresses and contact persons as applicable of the accepting authority, the  
 11 proposing agency, the approving agency, the applicant, and the consultant; and a brief  
 12 narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey  
 13 the full impact of the proposed action to the public.

14  
 15 (e d) The office may provide recommendations to the agency **or applicant**<sup>100</sup> responsible for  
 16 the ~~environmental assessment~~ EA or EIS regarding any applicable administrative  
 17 content requirements set forth in this chapter.

18  
 19 (f e) The office may, on a space available basis, publish other notices not specifically related  
 20 to chapter 343, HRS.

21  
 22 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,  
 23 343-3, 343-6)

24  
 25  
 26

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<sup>98</sup> Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

<sup>99</sup> Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

<sup>100</sup> **Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.**

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 4 Responsibilities

2 **§11-200-4 Identification of Approving Agency and<sup>101</sup>**  
3 **Accepting Authority**

4 (a) Whenever an agency proposes an action, the ~~final~~<sup>102</sup> authority to accept ~~a statement an~~  
5 EIS shall rest with:

- 6 (1) The governor, or ~~an~~ the governor's<sup>103</sup> authorized representative, whenever an  
7 action proposes the use of state lands or ~~the use of~~<sup>104</sup> state funds or,<sup>105</sup>  
8 whenever a state agency proposes an action ~~within~~ under<sup>106</sup> section 11-200-6(b);  
9 or
- 10 (2) The mayor, or ~~an~~ the mayor's<sup>107</sup> authorized representative, of the respective  
11 county whenever an action proposes only the use of county lands or county  
12 funds.

13 In the event that an action involves state and county lands, **state and county**<sup>108</sup> funds, or  
14 both **state and county**<sup>109</sup> lands and funds, the governor or the governor's authorized  
15 representative shall have authority to accept the EIS.<sup>110</sup>

17 (b) Whenever an applicant proposes an action, the authority for requiring an EA or<sup>111</sup>  
18 statements EIS, and for making a determination regarding any required EA, and<sup>112</sup>  
19 accepting any required statements EIS that have been prepared shall rest with the  
20 approving<sup>113</sup> agency ~~initially receiving and agreeing that initially received and agreed~~<sup>114</sup>  
21 to process the request for an approval. With respect to EISs, the approving agency is  
22 also called the accepting authority.<sup>115</sup>

101 Expand the content of this section to also identify the agency with responsibility in cases of EAs.

102 Removes the word "final" because it does not add to the meaning of the sentence **anymore**.

103 Housekeeping.

104 Housekeeping.

105 Housekeeping.

106 Housekeeping.

107 Housekeeping.

108 **Makes clear that "state and county" funds are meant.**

109 **Makes clear that "state and county" lands and funds are meant.**

110 Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.

111 Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

112 Adds EAs to the identification of which agency has responsibility. Language is phrased **d** so that the agency can make a FONSI or EISPN determination.

113 Housekeeping. Clarifies **that** the **agency** is called the **approving agency**.

114 Housekeeping.

115 Clarifies that **the** approving agency is the accepting authority for applicants.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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(c)<sup>116</sup> In the event that ~~there is~~<sup>117</sup> more than one agency ~~that is proposing the action or~~  
~~in the case of applicants,~~<sup>118</sup> ~~more than one agency~~<sup>119</sup> has jurisdiction over the action,  
and these agencies are unable to agree as to which agency has the responsibility for  
complying with ~~section 343-5(e)~~ chapter 343<sup>120</sup>, HRS, the office, after consultation with  
the agencies involved, shall determine which agency is responsible for compliance<sup>121</sup>. In  
making the determination, the office shall ~~take into consideration, including, but not~~  
~~limited to, the following factors~~ consider<sup>122</sup>:

- (1) The agency with the greatest responsibility for supervising or approving the action as a whole;
- (2) The agency that can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
- (3) The agency that has special expertise or greatest<sup>123</sup> access to information relevant to the action's implementation and impacts<sup>124</sup>; and
- (4) The extent of participation of each agency in the action.

(d) The office shall not serve as the accepting authority for any proposed agency or applicant action.<sup>125</sup>

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

<sup>116</sup> Creates new paragraph to clarify that OEQC can make this determination for applicants and for agencies when they are unable to agree on who is the proposing agency or approving agency. The paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when multiple agencies want the responsibility.

<sup>117</sup> Stylistic change to increase readability.

<sup>118</sup> Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

<sup>119</sup> Stylistic change to increase readability.

<sup>120</sup> Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

<sup>121</sup> Stylistic change to increase readability.

<sup>122</sup> Housekeeping.

<sup>123</sup> Helps to distinguish among agencies - all agencies have access to information.

<sup>124</sup> Clarifies what kind of information is meant.

<sup>125</sup> Clarifies that OEQC may not serve as the accepting authority, as per chapter 343, HRS.

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Environmental Council

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

1 Subchapter 5 Applicability

2 **§11-200-5 Agency Actions**

- 3 (a) For all **proposed**<sup>126</sup> agency<sup>127</sup> actions ~~which that~~ are not exempt,<sup>128</sup> as defined in section  
4 11-200-8, the proposing<sup>129</sup> agency shall assess at the earliest practicable time the  
5 significance of potential impacts of ~~its actions~~ the proposed agency's<sup>130</sup> action<sup>131</sup>,  
6 including the overall, cumulative impact in light of related past, present, and reasonably  
7 foreseeable<sup>132</sup> actions in the region area affected<sup>133</sup> ~~and further actions contemplated.~~<sup>134</sup>  
8
- 9 (b) The applicability of chapter 343, HRS, to specific agency **proposed** actions is  
10 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~  
11 ~~when an agency proposes to implement an action to use state or county lands or funds,~~  
12 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~<sup>135</sup>  
13
- 14 (c) Use of state or county funds shall include any form of funding assistance flowing from  
15 the State or a<sup>136</sup> county, and use of state or county lands includes any use (title, lease,  
16 permit, easement, licenses, etc.) or entitlement to those lands.  
17
- 18 (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or  
19 planning study for possible future programs or projects ~~which that~~ the agency has not  
20 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a  
21 proposal, it shall consider environmental factors and available alternatives and disclose  
22 these in any future assessment EA or subsequent statement EIS. ~~If, however,~~<sup>137</sup> the  
23 planning and feasibility studies involve testing or other actions ~~which that~~ may have a  
24 significant impact on the environment, ~~then~~<sup>138</sup> an environmental assessment EA or  
25 EIS<sup>139</sup> shall be prepared.

<sup>126</sup> Global change removing "proposed" before or modifying "action" unless "proposed" is necessary within the context of the sentence or provision to provide clarity.

<sup>127</sup> Housekeeping.

<sup>128</sup> Housekeeping.

<sup>129</sup> Housekeeping.

<sup>130</sup> Housekeeping. Removed words to eliminate redundancy.

<sup>131</sup> Housekeeping.

<sup>132</sup> Clarifies what is considered as part of a cumulative look impact analysis. Language is drawn from NEPA, 40 CFR 1508.7.

<sup>133</sup> Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

<sup>134</sup> Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

<sup>135</sup> Housekeeping. Redundant language.

<sup>136</sup> Housekeeping.

<sup>137</sup> Housekeeping.

<sup>138</sup> Housekeeping.


<sup>139</sup> Acknowledges direct-to-EIS pathway.


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Environmental Council

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

1  
2 (e) Any amendment to existing county general plans, however denominated, which may  
3 include ~~but not be limited to~~ development plans,<sup>140</sup> or community plans, where the  
4 amendment would result in designations other than agriculture, conservation, or  
5 preservation,<sup>141</sup> requires an environmental assessment EA or EIS<sup>142</sup>. (Actions by a  
6 county initiating a comprehensive review toward effectuating either a general plan or  
7 amendment thereof may be excepted. General plan amendments requested by a private  
8 owner or developer outside of the comprehensive review process are not excepted.)  
9

10 (f) In the event that the governor declares a state of emergency pursuant to chapter  
11 127A, HRS,<sup>143</sup> the governor has authority to suspend laws, including chapter 343, HRS.  
12 In such an event, the proposing agency shall file an exemption notice in its records that  
13 the emergency action was undertaken pursuant to a specific emergency proclamation.<sup>144</sup>  
14 If the emergency action has not substantially commenced within sixty days of the  
15 emergency proclamation, the action will be subject to chapter 343, HRS.<sup>145</sup> 

16  
17 (g) In the event of a sudden unexpected emergency causing or likely to cause loss  
18 or damage to life, health, property, or essential public service, but for which a declaration  
19 of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency  
20 may undertake an emergency action without conducting environmental review under  
21 chapter 343. An emergency action undertaken without environmental review may still be  
22 subject to the public's right to a judicial proceeding on the lack of an assessment,  
23 pursuant to chapter 343, HRS, and  all be initiated within one hundred and twenty days  
24 of the agency's decision to carry out the action or from the date the public becomes  
25 aware of the action, whichever is later.<sup>146</sup>

26  
27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(b),  
28 343-6)

<sup>140</sup> Housekeeping.

<sup>141</sup> Housekeeping.

<sup>142</sup> Direct-to-EIS is also an option.

<sup>143</sup> States the name of the statute for emergency proclamations.

<sup>144</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>145</sup> Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count.

<sup>146</sup> Provides an avenue for agencies to undertake emergency actions (e.g., cutting a firebreak) absent a governor declared state of emergency and provides safeguards to avoid abuse, including clearly defined circumstances in which the emergency action may be initiated and the requirement to produce an exemption notice after the fact. An agency decision to undertake an emergency action without environmental review may be subject to judicial review.



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Environmental Council

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

**§11-200-6 Applicant Actions**

- (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:
- (1) Implementing actions ~~which that~~ are either located in certain specified areas or contain certain specified **elements components**<sup>147/148</sup>; or
  - (2) Actions that require certain types of amendments to existing county general plans.

The **approving**<sup>149</sup> agency that initially received and agreed to process the request for approval shall require the applicant to prepare an EA of the proposed action at the earliest practicable time to determine whether an EIS is likely to be required; provided that if the approving agency determines, through its judgment and experience, that an EIS is likely to be required, the approving agency may authorize the applicant to choose not to prepare an EA and instead prepare an EIS that begins with the preparation of an EISPN.<sup>150</sup>

- (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the agency **processing**<sup>151</sup> ~~an applicant's request for approval to prepare an environmental assessment~~ the applicant to prepare an EA<sup>152</sup>. There are ~~seven~~ **six**<sup>153</sup> geographical categories, ~~five~~ **six**<sup>154</sup> ~~proposal elements~~ **component categories**<sup>155/156</sup>, and two administrative categories.

- (1) The ~~seven~~ **six**<sup>157</sup> geographical categories are:
- (A) The use of state or county lands;
  - (B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;
  - (C) Any use within the shoreline area as defined in section 205A-41, HRS;
  - (D) Any use within any historic site as designated in the national register or Hawaii **Register of Historic Places**<sup>158</sup>;

<sup>147</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).  
<sup>148</sup> Replaces the suggested term “element” with the term “component” to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.  
<sup>149</sup> Housekeeping. (Missing underlining in v0.1.)  
<sup>150</sup> Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.  
<sup>151</sup> Housekeeping. (Missing strikethrough in v0.1.)  
<sup>152</sup> Housekeeping.  
<sup>153</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>154</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>155</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).  
<sup>156</sup> Aligns language with “categories” used in previous sentence and uses the term “component” to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.  
<sup>157</sup> Reflects reorganization of “helicopter facility” to a component category.  
<sup>158</sup> Adds specificity.

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Environmental Council

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

- 1 (E) Any use within the Waikiki area of Oahu, the boundaries of which are
- 2 delineated in the land use ordinance as amended, establishing the
- 3 "Waikiki Special District";
- 4 (F) Any reclassification of any land classified as conservation district by the
- 5 state land use commission under chapter 205, HRS; and
- 6 ~~(G) The construction of a new, or the expansion or modification of an existing~~
- 7 ~~helicopter facilities facility<sup>159</sup> within the State which that by way of their~~
- 8 ~~its<sup>160</sup> activities may affect;<sup>161</sup> any land classified as conservation district~~
- 9 ~~by the state land use commission under chapter 205, HRS; the shoreline~~
- 10 ~~area as defined in section 205A-41, HRS; or,<sup>162</sup> any historic site as~~
- 11 ~~designated in the National Register or Hawaii Register as provided for in~~
- 12 ~~the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E,~~
- 13 ~~HRS of Historic Places<sup>163</sup>; or, until the statewide historic places inventory~~
- 14 ~~is completed, any historic site found by a field reconnaissance of the area~~
- 15 ~~affected by the helicopter facility and which that is under consideration for~~
- 16 ~~placement on the National Register or the Hawaii Register of Historic~~
- 17 ~~Places.<sup>164</sup>~~
- 18 (2) ~~The five six<sup>165</sup> proposal elements component categories~~ are:
- 19 (A) Wastewater treatment unit, except an individual wastewater system or
- 20 wastewater treatment unit serving fewer than fifty single-family dwellings
- 21 or the equivalent;
- 22 (B) Waste-to-energy facility;
- 23 (C) Landfill;
- 24 (D) Oil refinery; or
- 25 (E) Power-generating facility.
- 26 (F) The construction of a new, or the expansion or modification of an existing
- 27 helicopter facilities facility<sup>166</sup> within the State that by way of their its<sup>167</sup>
- 28 activities may affect;<sup>168</sup> any land classified as conservation district by the
- 29 state land use commission under chapter 205, HRS; the shoreline area
- 30 as defined in section 205A-41, HRS; or,<sup>169</sup> any historic site as designated

159 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

160 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

161 Housekeeping.

162 Housekeeping.

163 Housekeeping. Unnecessary specificity.

164 Deletes and moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

165 Reflects reorganization of "helicopter facility" to a component category.

166 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

167 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

168 Housekeeping.

169 Housekeeping.

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

in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places<sup>170</sup>; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.<sup>171</sup>

(23) The two administrative categories are:

- (A) Any amendment to existing county general plans, however denominated, which may include, but are not be limited to, development plans,<sup>172</sup> or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and
- (B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which 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.

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

<sup>170</sup> Housekeeping. Unnecessary specificity.

<sup>171</sup> Moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

<sup>172</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-7 Multiple or Phased Applicant or Agency**  
 2 **Actions**

3 A group of actions proposed by an agency or an applicant shall be treated as a single action  
 4 when:

- 5 (1) The component actions are phases or increments of a larger total undertaking  
 6 and lack independent utility<sup>173</sup>;
- 7 (2) An individual project action is a necessary precedent for to<sup>174</sup> a larger project  
 8 action<sup>175</sup>;
- 9 (3) An individual project action<sup>176</sup> represents a commitment to a larger project  
 10 action<sup>177</sup>; or
- 11 (4) The actions in question are essentially identical and a single statement EIS will  
 12 adequately address the impacts of each individual action and those of the group  
 13 of actions as a whole.

14  
 15 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
 16

<sup>173</sup> Incorporates the threshold for determining improper segmentation.

<sup>174</sup> Stylistic change.

<sup>175</sup> Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

<sup>176</sup> Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

<sup>177</sup> Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

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Environmental Council

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

**§11-200-8 Exempt Classes of Action Exemption  
Notices<sup>178</sup>**

- (a) ~~Chapter 343, HRS, states that procedures whereby specific Specific<sup>179</sup> types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment,<sup>180</sup> can be declared exempt from the preparation of an EA.<sup>181</sup> a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction<sup>182</sup> or expertise as to the propriety of the exemption. Government Agency<sup>183</sup> activities that do not rise to the level of being a project or program program or project, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs programs or projects for the purposes of Chapter 343, HRS.<sup>184</sup> Actions declared exempt from the preparation of an environmental assessment EA under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption<sup>185</sup> list represents exempt classes of action:~~
- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible minor<sup>186</sup> or no expansion or change of use beyond that previously existing;
  - (2) 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;
  - (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment

<sup>178</sup> Renames to shift focus from the “classes” (a term no longer used) to the notice.

<sup>179</sup> Removes unnecessary language.

<sup>180</sup> Removes unnecessary language. “Significant effects” as defined are “on the environment”.

<sup>181</sup> Incorporates language direction directly from chapter 343, HRS.

<sup>182</sup> Housekeeping.

<sup>183</sup> Clarifies that agencies are the government actors contemplated in this section, as opposed to other branches of the government or the federal government.

<sup>184</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

<sup>185</sup> Replaces “classes” language with “types”.

<sup>186</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

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Environmental Council

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

- 1 and facilities and the alteration and modification of same, including, but not  
 2 limited to:
- 3 (A) Single-family residences less than 3,500 square feet, as measured by the  
 4 controlling law under which the proposed action is being considered,<sup>187</sup>  
 5 if<sup>188</sup> not in conjunction with the building of two or more such units;
  - 6 (B) Multi-unit structures designed for not more than four dwelling units if not  
 7 in conjunction with the building of two or more such structures;
  - 8 (C) Stores, offices, and restaurants designed for total occupant load of twenty  
 9 persons or less per structure, if not in conjunction with the building of two  
 10 or more such structures; and
  - 11 (D) Water, sewage, electrical, gas, telephone, and other essential public  
 12 utility services extensions to serve such structures or facilities; accessory  
 13 or appurtenant structures including garages, carports, patios, swimming  
 14 pools, and fences; and, acquisition of utility easements;
- 15 (4) Minor alterations in the conditions of land, water, or vegetation;
  - 16 (5) Basic data collection, research, experimental management, and resource and  
 17 infrastructure testing and<sup>189</sup> evaluation activities ~~which that~~ do not result in a  
 18 serious or major disturbance to an environmental resource;
  - 19 (6) Construction or placement of minor structures accessory to existing facilities;
  - 20 (7) Interior alterations involving things such as partitions, plumbing, and electrical  
 21 conveyances;
  - 22 (8) Demolition of structures, except those structures located on any historic site as  
 23 designated in the national register or Hawaii Register of Historic Places<sup>190</sup>, or that  
 24 are under consideration for placement on the national register or the Hawaii  
 25 Register of Historic Places<sup>191</sup> as provided for in the National Historic Preservation  
 26 Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E,  
 27 HRS<sup>192</sup>;
  - 28 (9) Zoning variances except shoreline set-back variances; ~~and~~<sup>193</sup>
  - 29 ~~(10) Continuing administrative activities including, but not limited to purchase of~~  
 30 ~~supplies and personnel-related actions.~~<sup>194</sup>
  - 31 (14 10<sup>195</sup>) Acquisition of land and existing structures, including single or multi-unit  
 32 dwelling units, for the provision of affordable housing, involving no material

<sup>187</sup> Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

<sup>188</sup> Stylistic; mirrors provision below (B).

<sup>189</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

<sup>190</sup> Adds specificity.

<sup>191</sup> Aligns language with section 343-5(a)(8)(C), HRS.

<sup>192</sup> Unnecessary language.

<sup>193</sup> Housekeeping.

<sup>194</sup> Deletes language because it is addressed at the beginning of paragraph (a).

<sup>195</sup> Housekeeping. Renumbering this and subsequent paragraphs.

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

- 1 change of use beyond ~~that~~ previously existing ~~uses,~~<sup>196</sup> and for which the  
 2 legislature has appropriated or otherwise authorized funding<sup>197</sup>; ~~and~~<sup>198</sup>  
 3 (11) New construction of affordable housing that only has use of state or county lands  
 4 or funds as the sole<sup>199</sup> requirement for compliance with<sup>200</sup> chapter 343, HRS, and  
 5 as proposed<sup>201</sup> is consistent with existing state urban land classification, existing  
 6 county residential or mixed use zoning classification, and applicable federal,  
 7 state, and county development standards.<sup>202</sup>  
 8  
 9 (b) All exemptions under the ~~classes~~ types<sup>203</sup> in this section are inapplicable when the  
 10 cumulative impact of planned successive actions in the same place, over time, is  
 11 significant, or when an action that is normally insignificant in its impact on the  
 12 environment may be significant in a particularly sensitive environment.  
 13  
 14 (c) Any agency, at any time, may request that a new exemption ~~class~~ type<sup>204</sup> be added, or  
 15 that an existing one be amended or deleted. The request shall be submitted to the  
 16 council, in writing, and contain detailed information to support the request as set forth in  
 17 section 11-201-16, HAR, environmental council rules.  
 18  
 19 ~~(d) — Each agency, through time and experience, shall develop its own list of specific~~  
 20 ~~types of actions which fall within the exempt classes types above~~<sup>205</sup>, ~~as long as these~~  
 21 ~~lists are consistent with both the letter and intent expressed in these exempt classes~~  
 22 ~~here~~<sup>206</sup> ~~and chapter 343, HRS. These lists and any amendments to the lists shall be~~  
 23 ~~submitted to the council for review and concurrence. The lists shall be reviewed~~  
 24 ~~periodically by the council.~~  
 25  
 26 ~~(e)~~<sup>207</sup> ~~Actions that are clearly covered by an agency exemption list that has received~~  
 27 ~~council concurrence and do not have any potential to produce significant impacts do not~~

<sup>196</sup> Clarifies what “that” refers to.

<sup>197</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates ~~and compiles~~ the 2007 change.

<sup>198</sup> Housekeeping.

<sup>199</sup> Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, ~~not that the action only uses state or county funds or lands.~~

<sup>200</sup> Stylistic change.

<sup>201</sup> Removes ambiguity as to whether the project “as implemented” must be consistent.

<sup>202</sup> Adds affordable housing as an exemption type, with ~~caveats~~ the following caveats: 1) that the only trigger is use ~~of~~ state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

<sup>203</sup> Housekeeping.

<sup>204</sup> Housekeeping.

<sup>205</sup> Housekeeping.

<sup>206</sup> Housekeeping.

<sup>207</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

1 ~~require documentation.~~<sup>208</sup> ~~Actions with no documentation may still be subject to the~~  
2 ~~public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter~~  
3 ~~343, HRS.~~<sup>209</sup>

4  
5 ~~(f) For an action that an agency considered exempt according to the criteria in~~  
6 ~~paragraph (a) but is not clearly covered by the agency's exemption list, or is on the~~  
7 ~~agency's exemption list but that list has not received council concurrence within the past~~  
8 ~~five years, the agency shall undertake a systematic analysis to determine whether the~~  
9 ~~action merits exemption consistent with one or several of the types listed in paragraph~~  
10 ~~(a).~~<sup>210</sup> ~~For such actions, the agency shall obtain the advice of outside agencies or~~  
11 ~~individuals having jurisdiction or expertise as to the propriety of the exemption. An action~~  
12 ~~may not be segmented per section 11-200-7 so as to appear to be consistent with~~  
13 ~~several types listed in paragraph (a).~~<sup>211</sup>

14  
15 ~~(e g) Each agency shall maintain records of such~~<sup>212</sup> ~~actions, called exemption~~  
16 ~~notices,~~<sup>213</sup> ~~which it has found to be exempt from the requirements for preparation of an~~  
17 ~~environmental assessment EA in chapter 343, HRS, and each agency shall produce the~~  
18 ~~records for review upon request. The agency shall provide a means to notify and accept~~  
19 ~~input from the public in a timely manner after the exemption declaration is made. An~~  
20 ~~agency may request the office to publish the exemption notice in the periodic bulletin.~~  
21 ~~The public's right to judicial proceeding on the lack of an assessment under chapter 343,~~  
22 ~~HRS shall commence from the date the public is notified of the exemption through the~~  
23 ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~<sup>214</sup>

<sup>208</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de minimis* but may not require the level of consultation and documentation associated with typical projects or programs.

<sup>209</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers are out" and the agency may have erred in its decision to not prepare an EA.

<sup>210</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

<sup>211</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

<sup>212</sup> Housekeeping.

<sup>213</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

<sup>214</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (f h) In the event the governor declares a state of emergency pursuant to chapter  
2 127A, HRS,<sup>215</sup> the governor may exempt any affected program or action from complying  
3 with this chapter. has authority to suspend laws, including chapter 343, HRS. In such an  
4 event, no exemption declaration is required and the proposing agency or approving  
5 agency shall file an exemption notice in its records that the emergency action was  
6 undertaken pursuant to a specific emergency proclamation.<sup>216</sup>

7  
8 (i) An emergency action that is not initiated within the period of the governor's  
9 emergency proclamation shall no longer be considered an emergency action and  
10 therefore shall be subject to chapter 343, HRS.<sup>217/218</sup>

11  
12 (d) Each agency, through time and experience, shall develop its own list consistent  
13 with both the letter and intent expressed here and in chapter 343, HRS of specific  
14 programs or projects that the agency considers to be included within the exempt types  
15 above. These lists and any amendments to the lists shall be submitted to the council for  
16 review and concurrence. The lists shall be reviewed periodically by the council.<sup>219</sup>

17  
18 (e) Each agency shall create exemption notices for actions that it has found to be  
19 exempt from the requirements for preparation of an EA. Each agency shall produce the  
20 exemption notices for review upon request by the public or an agency.<sup>220</sup>

21  
22 (f) Agencies shall consult on the propriety of an exemption and publish exemption  
23 notices with the office. Consultation and publication of an exemption notice is not  
24 required when:

25 (1) The council has concurred with the agency's exemption list no more than seven  
26 years before the agency initiates the action or authorizes an applicant to initiate  
27 the action;

28 (2) The action is consistent with the letter and intent of the agency's exemption list;  
29 and

30 (3) The action does not have any potential to produce significant impacts.<sup>221</sup>

<sup>215</sup> States the name of the statute for emergency proclamations.

<sup>216</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>217</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.

<sup>218</sup> Deletes subsections (d) - (i) and reorganizes content to increase readability.

<sup>219</sup> Requires an agency to create an exemption list and submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>220</sup> Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200-5.

<sup>221</sup> Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Provides an exception to the consultation and

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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(g) Actions with no published exemption notice may still be subject to the public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency's decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is later.<sup>222</sup>

(h) For consultation on the propriety of an exemption, an agency shall undertake an analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). The agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. This analysis and consultation shall be documented in the exemption notice.<sup>223</sup>

(i) To publish an exemption notice, the agency shall submit the exemption notice to the office per section 11-200-3 for publication in the next periodic bulletin. The public's right to a judicial proceeding on the lack of an assessment under chapter 343, HRS, shall commence from the date of publication in the notice.<sup>224</sup>

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

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publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

<sup>222</sup> Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.

<sup>223</sup> Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

<sup>224</sup> Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public's right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 6 Determination of Significance

2 **§11-200-9 Assessment of Agency Actions and**  
3 **Applicant Actions**

4 (a) For agency actions, except those actions exempt from the preparation of an  
5 environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the  
6 proposing agency shall:

7 (1) Seek, at the earliest practicable time, the advice and input of the county agency  
8 responsible for implementing the county's general plan for each county in which  
9 the proposed action is to occur, and consult with other agencies having  
10 jurisdiction or expertise as well as those citizen groups and individuals ~~which~~ that  
11 the proposing agency reasonably believes ~~to~~ may<sup>225</sup> be affected;

12 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~  
13 the<sup>226</sup> statutory conditions under section 343-5(a), HRS, that<sup>227</sup> require the  
14 preparation of an environmental assessment EA;

15 (3) Prepare an environmental assessment EA pursuant to section 11-200-10 ~~of this~~  
16 ~~chapter which shall also identify~~ that identifies<sup>228</sup> potential impacts, ~~evaluate~~  
17 evaluates<sup>229</sup> the potential significance of each impact, and ~~provide~~ provides<sup>230</sup> for  
18 detailed study of significant impacts;

19 (4) Determine, after reviewing the environmental assessment EA described in  
20 paragraph (3), and considering the significance criteria in section 11-200-12,  
21 whether the proposed action warrants an anticipated ~~negative declaration~~ FONSI  
22 or an ~~environmental impact statement preparation notice~~ EISPN, provided that  
23 for an ~~environmental impact statement preparation notice~~ EISPN, the proposing  
24 agency shall inform the accepting authority of the proposed action;

25 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~  
26 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
27 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the  
28 completed informational form referenced<sup>231</sup> in section 11-200-3(d)<sup>232</sup>, and ~~four~~  
29 ~~copies of~~<sup>233</sup> the supporting environmental assessment EA (a draft environmental  
30 assessment EA for the anticipated ~~negative declaration~~ FONSI or a final  
31 environmental assessment EA for the environmental impact statement

<sup>225</sup> Housekeeping.

<sup>226</sup> Housekeeping.

<sup>227</sup> Housekeeping.

<sup>228</sup> Housekeeping.

<sup>229</sup> Housekeeping.

<sup>230</sup> Housekeeping.

<sup>231</sup> Housekeeping.

<sup>232</sup> Housekeeping.

<sup>233</sup> OEQC only needs one copy, not four.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 ~~preparation notice~~ EISPN, when applicable<sup>234</sup>) with the office in accordance with  
2 sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of  
3 this chapter;
- 4 (6) ~~Distribute~~ Circulate<sup>235</sup>, concurrently with the filing in paragraph (5), the draft  
5 ~~environmental assessment~~ EA to other agencies having jurisdiction or expertise  
6 as well as citizen groups and individuals ~~which~~ that the proposing agency  
7 reasonably believes ~~to~~ may<sup>236</sup> be affected;
- 8 (7) Deposit, concurrently with the filing in paragraph (5), one paper<sup>237</sup> copy of the  
9 draft ~~environmental assessment~~ EA at the nearest state library in each county in  
10 which the proposed action is to occur and one paper copy at the Hawaii  
11 Documents Center<sup>238</sup>;
- 12 (8) Receive and respond to public comments in accordance with:  
13 (A) section 11-200-9.1 for draft ~~environmental assessments~~ EAs for  
14 anticipated ~~negative declaration~~ FONSI determinations; or  
15 (B) section 11-200-15 for ~~environmental assessments~~ EAs for ~~preparation~~  
16 ~~notices~~ EISPNS.
- 17 For draft ~~environmental assessments~~ EAs, the proposing agency shall revise the  
18 ~~environmental assessment~~ EA to incorporate public comments as appropriate,  
19 and append copies of comment letters and responses in the ~~environmental~~  
20 ~~assessment~~ EA (the draft ~~environmental assessment~~ EA as revised, shall be filed  
21 as a final ~~environmental assessment~~ EA as described in section 11-200-11.2);  
22 and
- 23 (9) As appropriate, issue either a ~~negative declaration~~ FONSI determination<sup>239</sup> or an  
24 ~~environmental impact statement preparation notice~~ EISPN pursuant to the  
25 requirements of section 11-200-11.2, ~~provided that for~~ For<sup>240</sup> ~~preparation notice~~  
26 EISPNS determinations<sup>241</sup>, the proposing agency shall proceed to section 11-  
27 200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-  
28 200-13, and 11-200-14, as appropriate.  
29

<sup>234</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>235</sup> The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>236</sup> Housekeeping.

<sup>237</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>238</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>239</sup> Removes redundant term “definition” as a FONSI is by definition a determination.

<sup>240</sup> Housekeeping.

<sup>241</sup> An EISPN is by definition a determination.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

- 1 (b) For applicant actions, except those actions ~~exempt~~ **excluded**<sup>242</sup> from the preparation of  
 2 an ~~environmental assessment~~ EA pursuant to section 343-5, HRS, or those actions  
 3 ~~which that~~ the approving agency declares exempt pursuant to section 11-200-8, the  
 4 approving agency shall:
- 5 (1) Require the applicant, at the earliest practicable time, to seek the advice and  
 6 input of the lead county agency responsible for implementing the county's  
 7 general plan for each county in which the proposed action is to occur, and  
 8 consult with other agencies having jurisdiction or expertise as well as those  
 9 citizen groups and individuals ~~which that~~ the approving agency reasonably  
 10 believes to be affected;
- 11 ~~(2) Require the applicant to provide whatever information the approving agency~~  
 12 ~~deems necessary to~~<sup>243</sup> ~~complete the preparation of an environmental~~  
 13 ~~assessment prepare an EA in accordance with section 11-200-10;~~<sup>244</sup>
- 14 ~~(3)~~ **2**<sup>245</sup> Within thirty days from the date of receipt of the applicant's ~~complete~~ **completed**  
 15 request for approval to the approving agency:
- 16 (A) ~~prepare an environmental assessment pursuant to section 11-200-10;~~  
 17 ~~and~~
- 18 (B) ~~determine, after reviewing the environmental assessment and considering~~  
 19 ~~the significance criteria in section 11-200-12 whether the proposed action~~  
 20 ~~warrants an anticipated negative declaration or an environmental impact~~  
 21 ~~statement preparation notice;~~  
 22 ~~require the applicant~~<sup>246</sup> ~~to prepare a draft EA pursuant to section 11-200-10;~~<sup>247</sup>
- 23 **4** ~~3~~<sup>248/249</sup> Determine, after reviewing the draft EA and considering the significance  
 24 criteria in section 11-200-12, whether the proposed action warrants an  
 25 anticipated FONSI or an EISPN;<sup>250</sup>
- 26 ~~(5)~~ **4**<sup>251</sup> File the appropriate notice of determination (anticipated ~~negative declaration~~  
 27 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
 28 accordance with section 11-200-11.1 or 11-200-11.2), the completed

<sup>242</sup> Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.

<sup>243</sup> Narrows the language to focus on the EA on the content requirements.

<sup>244</sup> This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.

<sup>245</sup> Housekeeping (renumbering).

<sup>246</sup> Shifts the focus of preparation to the applicant per Act 172 (2012).

<sup>247</sup> Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within ~~30~~ **thirty** days of receipt of a request for approval which course of environmental review the applicant is to take.

<sup>248</sup> Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

<sup>249</sup> Housekeeping (renumbering).



<sup>250</sup> Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.

<sup>251</sup> Housekeeping (renumbering).

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Environmental Council

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

1 informational form referenced<sup>252</sup> in section 11-200-3(d)<sup>253</sup> and ~~four copies of the~~  
 2 supporting environmental assessment EA (a draft environmental assessment EA  
 3 for the anticipated ~~negative declaration FONSI~~ or a final environmental  
 4 assessment EA for the environmental impact statement preparation notice  
 5 EISPN, when applicable<sup>254</sup>) with the office in accordance with sections 11-200-3,  
 6 and 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter<sup>255</sup>;  
 7 **(6 5)**<sup>256</sup> Distribute Circulate<sup>257</sup>, or require the applicant to distribute circulate<sup>258</sup>,  
 8 concurrently with the filing in paragraph (4), the draft environmental assessment  
 9 EA to other agencies having jurisdiction or expertise as well as citizen groups  
 10 and individuals ~~which~~ that the approving agency reasonably believes to be  
 11 affected;  
 12 **(7 6)**<sup>259</sup> Deposit or require the applicant to deposit, concurrently with the filing in  
 13 paragraph (4), one paper<sup>260</sup> copy of the draft ~~environmental assessment EA~~ at  
 14 the nearest state library in each county in which the proposed action is to occur  
 15 and one paper copy at the Hawaii Documents Center<sup>261</sup>;  
 16 **(8 7)**<sup>262</sup> Receive public comments, transmit copies of public comments to the applicant  
 17 and require Require the applicant to receive and respond to public comments, all  
 18 in accordance with section 11-200-9.1 for draft ~~environmental assessment EA~~  or  
 19 11-200-15 for ~~preparation notices EISPNs~~ and their associated final  
 20 environmental assessment EA. For draft environmental assessment  the  
 21 approving agency shall require the applicant:  
 22 (A)<sup>263</sup> to provide revise the draft EA with<sup>264</sup> ~~whatever~~ information the approving  
 23 agency deems necessary in accordance with section 11-200-10<sup>265</sup> to

<sup>252</sup> Housekeeping.

<sup>253</sup> Housekeeping.

<sup>254</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>255</sup> Adds language to ensure that other sections are fulfilled as well.

<sup>256</sup> Housekeeping (renumbering).

<sup>257</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>258</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>259</sup> Housekeeping (renumbering).

<sup>260</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>261</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>262</sup> Housekeeping (renumbering).

<sup>263</sup> Breaks up the paragraph so that the three requirements for the applicant are easier to read.

<sup>264</sup> Housekeeping.

<sup>265</sup> Emphasizes that the final EA content should still meet the EA content requirements as set for forth in section 10.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1                                    ~~revise the draft environmental assessment to<sup>266</sup> inform its determination~~  
 2                                    ~~for a FONSI or EISPN, taking into account comments on the draft EA<sup>267</sup>;~~  
 3                                    (B)    to incorporate comments as appropriate; and,  
 4                                    (C)    to include copies of comment letters and the applicant's<sup>268</sup> responses,  
 5                                    ~~(the The<sup>269</sup> revised draft environmental assessment EA, as revised, shall be filed~~  
 6                                    ~~as a final environmental assessment EA as described in section 11-200-11.2)<sup>270</sup>;~~  
 7                                    and  
 8                                    (9 8)<sup>271</sup> As appropriate, issue a ~~negative declaration FONSI determination<sup>272</sup>~~ or an  
 9                                    ~~environmental impact statement preparation notice EISPN with appropriate~~  
 10                                    ~~notice of determination thereof pursuant to section 11-200-11.2 within thirty~~  
 11                                    ~~days<sup>273</sup> from the end of the thirty-day public comment period of receiving~~  
 12                                    ~~information required for delivery to the approving agency pursuant to paragraph 8~~  
 13                                    ~~7<sup>274</sup>/<sup>275</sup>. For preparation notice EISPN determinations, the approving agency shall~~  
 14                                    ~~proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-~~  
 15                                    ~~10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.~~  
 16  
 17 (c)    For agency or applicant actions, the proposing agency or the applicant approving  
 18                                    agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable  
 19                                    range of<sup>276</sup> alternatives, in addition to the proposed action in the environmental  
 20                                    assessment EA.<sup>277</sup>  
 21  
 22 (d)    For agency or applicant actions, if the agency determines, through its judgment and  
 23                                    experience, that an EIS is likely to be required, the agency may choose not to prepare  
 24                                    an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and

<sup>266</sup> Housekeeping. Removes redundant language.

<sup>267</sup> Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.

<sup>268</sup> Housekeeping.

<sup>269</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>270</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>271</sup> Housekeeping (renumbering).

<sup>272</sup> Removes redundant language. A FONSI is defined as a determination in section 11-200-2.

<sup>273</sup> Removes inadvertent strikethrough.

<sup>274</sup> Paragraphs renumbered.

<sup>275</sup> Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.

<sup>276</sup> Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.

<sup>277</sup> Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            instead shall prepare or shall cause to be prepared<sup>278</sup> an EIS that begins with an  
 2            EISPN.<sup>279</sup>  
 3  
 4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 5  
 6  
 7

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<sup>278</sup> Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

<sup>279</sup> Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.


**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-9.1 Public Review & Response Requirements**  
 2 **for Draft Environmental Assessments for Anticipated**  
 3 **~~Negative Declaration~~ Finding of No Significant Impact<sup>280</sup>**  
 4 **Determinations & Addenda to Draft Environmental**  
 5 **Assessments**

6 (a) This section shall apply only if a proposing agency or an ~~approving agency~~ applicant<sup>281</sup>  
 7 anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that  
 8 agency ~~or applicant~~<sup>282</sup> has completed the draft EA requirements of section 11-200-9(a),  
 9 paragraphs (1), (2), (3), (4), (5), (6) and (7) ~~for agencies~~<sup>283</sup>, or section 11-200-9(b),  
 10 paragraphs (1), (2), (3), (4), (5) and (6) ~~for applicants~~<sup>284</sup>, as appropriate.

11  
 12 (b) ~~The period for public review and for submitting written comments for both agency actions~~  
 13 ~~and applicant actions shall begin as of the initial issue date that notice of availability of~~  
 14 ~~the draft environmental~~<sup>285</sup> ~~assessment EA was published in the periodic bulletin and~~  
 15 ~~shall continue for a period of thirty days.~~ Unless mandated otherwise by statute<sup>286</sup>, for  
 16 agency actions and applicant actions, the period for public review and for submitting  
 17 written comments shall commence from the date  notice of availability of the draft EA is  
 18 initially issued in the periodic bulletin and shall continue for a period of thirty calendar  
 19 days.<sup>287</sup> Written comments sent<sup>288</sup> to the proposing agency or approving agency  
 20 applicant<sup>289</sup>, whichever is applicable, with a copy of the comments to the applicant, if  
 21 applicable,<sup>290</sup> or proposing agency,<sup>291</sup> shall be received by<sup>292</sup> or postmarked to the  
 22 proposing agency or approving agency applicant<sup>293</sup>, within the thirty-day period. Any

280 Housekeeping.

281 Reflects change that the applicant, rather than the approving agency, prepares the EA.

282 Reflects change that the applicant, rather than the approving agency, prepares the EA.

283 These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

284 These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

285 Housekeeping. (v0.1 omitted strikethrough)

286 Acknowledges that the public review period may be altered for certain actions by statute.

287 Measures time consistently in the process. Adds clarity ~~to~~ regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

288 Stylistic change.

289 Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

290 Clarifies that applicants are not always involved and when not involved, not a copy of the comments need to be sent to the applicant.

291 Redundant; the proposing agency is already as identified as receiving comments.

292 Stylistic change.

293 Reflects change that the applicant, rather than the approving agency, prepares the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 comments outside of the thirty-day period need not be considered or<sup>294</sup> responded to nor  
 2 considered in the final EA. However, for a proposed site for a new correctional facility or  
 3 for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS,  
 4 the period for public review and submitting written comments thirty-day period shall be a  
 5 sixty-day period days.<sup>295/296</sup>  
 6  
 7 (c) For agency actions, the proposing agency shall<sup>297</sup> respond in writing to all comments  
 8 received or postmarked during the thirty-day statutorily mandated<sup>298</sup> review period,  
 9 incorporate comments into the final EA<sup>299</sup> as appropriate,<sup>300</sup> and append the comments  
 10 and responses in to<sup>301</sup> the final environmental assessment EA. Each response shall be  
 11 sent directly to the person commenting, with copies of the response also sent to the  
 12 office. If a number of comments are identical or very similar, the proposing agency may  
 13 group the comments and prepare a single standard response for each group. When  
 14 grouping comments, the agency must include each name of the commentor along with  
 15 the grouped response. One representative copy of comments that are identical or very  
 16 similar may be included in the final EA rather than reproducing each individual comment.  
 17 All individual comments and representative copies of identical or very similar comments  
 18 the<sup>302</sup> must be attached appended to the final EA regardless of whether the agency  
 19 believes the comments merit individual discussion in the body of the final EA.<sup>303</sup>  
 20  
 21

<sup>294</sup> Stylistic change.

<sup>295</sup> Incorporates the public comment period and time limit from HRS § 353-16.35.

<sup>296</sup> Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.

<sup>297</sup> Acknowledges that some statutes may modify the public review and comment period.

<sup>298</sup> Acknowledges that other statutes may require comment periods of varying lengths.

<sup>299</sup> Clarifies that the comments are included in the final EA.

<sup>300</sup> Housekeeping.

<sup>301</sup> Housekeeping.

<sup>302</sup> Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en mass and to focus responses on the issues raised by comments rather than on responding to individual commentors.

<sup>303</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (d) For applicant actions, the applicant shall respond in writing to all comments received or
- 2 postmarked during the thirty-day review period and ~~the approving agency shall~~<sup>304</sup>
- 3 incorporate ~~or~~ comments into the final EA as appropriate, and<sup>305</sup> append the comments
- 4 and responses in to<sup>306</sup> the final ~~environmental assessment EA~~. If a number of comments
- 5 are identical or very similar, the applicant may group the comments ~~a and~~<sup>307</sup> prepare a
- 6 single standard response for each group. ~~When grouping comments, the applicant must~~
- 7 include each name of the commentor along with the grouped response.<sup>308</sup> The
- 8 comments must be attached to the final EA regardless of whether the approving agency
- 9 believes the comments merit individual discussion in the body of the final EA.<sup>309</sup> ~~Each~~
- 10 ~~response shall be sent directly to the person commenting with a copy to the office.~~<sup>310</sup> A
- 11 ~~copy of each response shall be sent to the approving agency for its timely preparation of~~
- 12 ~~a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or~~
- 13 ~~11-200-11.2.~~<sup>311</sup>
- 14
- 15 (e) An addendum document to a draft ~~environmental assessment EA~~ shall reference the
- 16 original draft ~~environmental~~<sup>312</sup> ~~assessment EA~~ it attaches to and shall comply with all
- 17 applicable public review and comment requirements set forth in sections 11-200-3 and
- 18 11-200-9.
- 19

20 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp: HRS §343-3, 343-5, 343-

21 6)

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<sup>304</sup> The applicant prepares the document, and so therefore has the responsibility to incorporate the comments and responses into the document.

<sup>305</sup> Clarifies that the comments are incorporated into the final EA.

<sup>306</sup> Housekeeping.

<sup>307</sup> Housekeeping.

<sup>308</sup> Ensures that each individual who submits a comment, even when it is in the form of a pre-printed postcard or letter that may be grouped with other identical or very similar comments, can verify that the individual's comment was received and responded to.

<sup>309</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments.

<sup>310</sup> Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>311</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

<sup>312</sup> Housekeeping. (v0.1 omitted strikethrough)

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**Proposed §11-200-XX Environmental Assessment Style**

(a) In developing the draft and final EA, proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the EA. The scope of the EA may vary with the scope of the proposed action and its impact. Data and analyses in an EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. An EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the EA, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EA may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EA for these types of actions may be broader and more general than an EA for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. Analysis may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EA and that are proposed to be carried out in conformance with the conditions and mitigation measures presented in the EA may require no or limited further review.

<sup>313</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (c) In preparing any EA, care shall be taken to concentrate on important issues and to  
2 ensure that the EA remains an essentially self-contained document, capable of being  
3 understood by the reader without the need for undue cross-reference.<sup>314</sup>  
4  
5 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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<sup>314</sup> Mirrors subsection (c) in section 11-200-19, Environmental Impact Style.



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## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 §11-200-10 Contents of an Environmental Assessment**

2 The proposing agency or ~~approving agency~~ applicant<sup>315</sup> shall prepare ~~any a~~<sup>316</sup> draft or final  
3 ~~environmental assessment EA~~ of each ~~proposed for any~~<sup>317</sup> action ~~not exempt under section 11-~~  
4 ~~200-8~~<sup>318</sup> and determine whether the anticipated effects constitute a significant effect in the  
5 context of chapter 343, HRS, and section 11-200-12. The ~~environmental assessment EA~~ shall  
6 contain, but not be limited to, the following information:

- 7 (1) Identification of applicant or proposing agency;
- 8 (2) Identification of approving agency, if applicable;
- 9 (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~  
10 ~~preparing~~<sup>319</sup> the assessment;
- 11 (4) General description of the action's technical, economic, social, cultural<sup>320</sup> and  
12 environmental characteristics;
- 13 (5) Summary description of the affected environment, including suitable and  
14 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
15 Floodway Boundary Maps, or United States Geological Survey topographic  
16 maps;
- 17 (6) Identification and ~~summary analysis~~<sup>321</sup> of impacts and alternatives considered;
- 18 (7) Proposed mitigation measures;
- 19 (8) Agency determination ~~or, for final EAs, or draft environmental assessments EAs~~  
20 ~~only~~, an anticipated determination ~~for draft EAs~~<sup>322</sup>;
- 21 (9) Findings and reasons supporting the agency determination or anticipated  
22 determination;
- 23 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be  
24 prepared;
- 25 (11) List of all required<sup>323</sup> permits and approvals (State, federal, county) ~~required and~~  
26 identification of which are considered to be discretionary<sup>324</sup>; and

<sup>315</sup> Removes "approving agency" and replaces with "applicant" because an applicant, rather than an agency, is the one who will prepare the EA.

<sup>316</sup> Housekeeping.

<sup>317</sup> Stylistic change.

<sup>318</sup> Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.

<sup>319</sup> ~~Uses more accurate time consistent with language in the rules. Uses more accurate language~~  
("preparing" rather than "making") that is consistent with language in the rules.

<sup>320</sup> Aligns provision with content requirement of a draft EIS under section 11-200-17(e).

<sup>321</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a ~~detailed~~ discussion ~~detailed enough sufficient~~ to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

<sup>322</sup> Stylistic change to improve clarity.

<sup>323</sup> Housekeeping. Moves the word required from the end of the clause to before the word "permits".

<sup>324</sup> Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

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Environmental Council

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

1 (12) Written comments and responses to the comments ~~under~~ received pursuant  
2 to<sup>325</sup>the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1),  
3 or 11-200-15, and statutorily prescribed public review periods.  
4

5 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),  
6 343-6)  
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14 **§11-200-11 REPEALED.**

15 [R AUG 31 1996]  
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<sup>325</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-11.1 Notice of Determination for Draft**  
2 **Environmental Assessments**

- 3 (a) After:<sup>326</sup>
- 4 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>327</sup> ~~an environmental assessment~~  
5 ~~a draft EA, and~~<sup>328</sup>
- 6 (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>329</sup>
- 7 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
8 if the proposing agency or the approving agency anticipates that the proposed action is  
9 not likely to have a significant effect, ~~if the proposing agency or approving agency~~<sup>330</sup>  
10 shall issue a notice of ~~determination~~<sup>331</sup> ~~which that shall be~~<sup>332</sup> an anticipated negative  
11 ~~declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.
- 12
- 13 (b)<sup>333</sup> The proposing agency or approving agency shall ~~also file such the~~<sup>334</sup> notice and  
14 supporting draft EA<sup>335</sup> with the office as early as possible after the determination is made  
15 pursuant to and in accordance with section 11-200-9,<sup>336</sup> and the requirements in  
16 subsection (e)<sup>337</sup> ~~along with four copies of the supporting environmental assessment~~<sup>338</sup>.  
17 ~~In addition to the above, the anticipated negative declaration determination for any~~  
18 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~  
19 applicant actions, the approving agency shall also send the anticipated FONSI to the  
20 applicant.<sup>339</sup>
- 21
- 22 (c) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
23 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
24 of receipt by the office in accordance with section 11-200-3.

<sup>326</sup> Housekeeping. Breaks out three conditions into ~~3~~ three items and capitalizes each of the numbered items to make the language clearer.

<sup>327</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>328</sup> Housekeeping. Specifies draft EA.

<sup>329</sup> Housekeeping.

<sup>330</sup> Housekeeping.

<sup>331</sup> Removes redundant language. An anticipated FONSI is defined as a "determination".

<sup>332</sup> Removes redundant language.

<sup>333</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>334</sup> Housekeeping.

<sup>335</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>336</sup> Housekeeping.

<sup>337</sup> Housekeeping.

<sup>338</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>339</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

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Environmental Council

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

- 1 (ed) The notice of an anticipated FONSI determination shall **indicate include** in a concise  
 2 manner:
- 3 (1) Identification of the<sup>340</sup> **applicant or** proposing agency **or applicant**<sup>341</sup>;
  - 4 (2) Identification of the approving agency or<sup>342</sup> accepting authority;
  - 5 (3) ~~Brief~~ **A brief**<sup>343</sup> description of the<sup>344</sup> **proposed** action;
  - 6 (4) ~~Determination~~ **The determination** anticipated FONSI<sup>345</sup>;
  - 7 (5) Reasons supporting the<sup>346</sup> **anticipated FONSI determination**; and
  - 8 (6) ~~Name~~ **The name**<sup>347</sup>, **title, contact information, including the email address,**  
 9 **physical**<sup>348</sup> address, and phone number of **a contact person an individual**  
 10 **representative of the proposing agency or applicant who may be contacted** for  
 11 further information.<sup>349</sup>
- 12
- 13 (de) When an agency withdraws a document, determination, or both<sup>350</sup> pursuant to ~~its~~ the  
 14 agency's<sup>351</sup> rules, the agency shall submit to the office a written letter informing the office  
 15 of ~~its~~ the<sup>352</sup> withdrawal **and the rationale for the withdrawal**<sup>353</sup>. The office shall publish  
 16 notice of agency withdrawals in accordance with section 11-200-3.
- 17
- 18 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
- 19

<sup>340</sup> Housekeeping.

<sup>341</sup> **Parallels similar sentences in the regulations that reference the "proposing agency" first and the "applicant" second.**

<sup>342</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>343</sup> Housekeeping.

<sup>344</sup> Housekeeping.

<sup>345</sup> Housekeeping.

<sup>346</sup> Housekeeping.

<sup>347</sup> Housekeeping.

<sup>348</sup> **includes Modernizes the requirements to include** email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>349</sup> **Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.**

<sup>350</sup> Clarifies that an agency may withdraw a document (i.e., FEA) **as well as being able to and may** withdraw a determination (i.e., EISPN or FONSI).

<sup>351</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

<sup>352</sup> Housekeeping.

<sup>353</sup> **Clarifies that agencies should support the withdrawal notice to the office with a rationale.**

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Environmental Council

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

**§11-200-11.2 Notice of Determination for Final  
Environmental Assessments**

- (a) After:<sup>354</sup>
  - (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>355</sup> a final environmental assessment EA,
  - (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>356</sup>
  - (3) ~~applying~~ Applying the significance criteria in section 11-200-12,

the proposing agency or the approving agency shall issue ~~one of the following notices a~~  
~~notice~~<sup>357</sup> of determination for<sup>358</sup> an EISPN or FONSI<sup>359</sup> in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office ~~addressing the requirements in~~  
~~subsection (c), along with four copies of the supporting final environmental~~  
~~assessment,~~<sup>360</sup> ~~provided that in addition to the above, all notices of determination for~~  
~~any applicant action shall be mailed to the requesting applicant by the approving~~  
~~agency.~~<sup>361</sup>
- (4b)<sup>362</sup> ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination ~~which that~~ shall be an ~~environmental impact statement preparation notice~~ EISPN and such notice shall be filed as early as possible ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>363</sup>.
- (2c) ~~Negative declaration~~ FONSI. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination ~~which that~~<sup>364</sup> shall be a ~~negative declaration~~ FONSI, and the proposing agency or approving agency shall file such notice with the office as early as possible ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>365</sup>.

<sup>354</sup> Housekeeping. Breaks out three conditions into 3 three items and capitalizes each of the numbered items to make the language clearer.

<sup>355</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>356</sup> Housekeeping.

<sup>357</sup> Housekeeping.

<sup>358</sup> Removes redundant language. A FONSI and EISPN are by definition "determinations".

<sup>359</sup> Clarifies which of two determinations is to be issued.

<sup>360</sup> Removes unnecessary language on final EA filing requirements.

<sup>361</sup> This requirement is now addressed in the new proposed paragraph D.

<sup>362</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>363</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

<sup>364</sup> Housekeeping.

<sup>365</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (d) The proposing agency or approving agency shall file the notice and the supporting final  
 2 EA with the office as early as possible after the determination is made in accordance  
 3 with section 11-200-9, addressing<sup>366</sup> the requirements in subsection (f).<sup>367</sup> For applicant  
 4 actions, the approving agency shall send the notice of determination for an EISPN or  
 5 FONSI to the applicant.<sup>368</sup>  
 6
- 7 ~~(b)~~ The office shall publish the appropriate notice of determination in the periodic bulletin  
 8 following receipt of the documents in subsection (a) by the office in accordance with  
 9 section 11-200-3.  
 10
- 11 ~~(e)~~ The notice of determination for a FONSI<sup>369</sup> shall indicate in a concise manner:  
 12 (1) Identification of the<sup>370</sup> applicant or proposing agency;  
 13 (2) Identification of the approving agency or<sup>371</sup> accepting authority;  
 14 (3) ~~Brief~~ A brief<sup>372</sup> description of the<sup>373</sup> proposed action;  
 15 (4) ~~Determination~~ The determination<sup>374</sup>;  
 16 (5) Reasons supporting the<sup>375</sup> determination; and  
 17 (6) ~~Name~~ The name<sup>376</sup>, title, contact information, including the email address,  
 18 physical<sup>377</sup> address, and phone number of a contact person an individual  
 19 representative of the proposing agency or applicant who may be contacted for  
 20 further information.<sup>378/379</sup>

<sup>366</sup> Housekeeping. (v0.1 omitted underlining)

<sup>367</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>368</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>369</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.

<sup>370</sup> Housekeeping.

<sup>371</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>372</sup> Housekeeping.

<sup>373</sup> Housekeeping.

<sup>374</sup> Housekeeping.

<sup>375</sup> Housekeeping.

<sup>376</sup> Housekeeping.

<sup>377</sup> Modernizes the requirements to includes include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>378</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.


<sup>379</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            The notice of determination for an EISPN shall be prepared pursuant to section 11-200-  
2            15.<sup>380</sup>

3  
4 (dg)    When an agency withdraws a document, determination, or both<sup>381</sup> pursuant to ~~its~~ the  
5            agency's<sup>382</sup> rules, the agency shall submit to the office a written letter informing the office  
6            of its withdrawal.  The office shall publish notice of agency withdrawals in accordance  
7            with section 11-200-3.

8  
9 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

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<sup>380</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

<sup>381</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

<sup>382</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 §11-200-12 Significance Criteria**

- 2 (a) In considering the significance of potential environmental effects, agencies shall  
3 consider the sum of effects on the quality of the environment,<sup>383</sup> and shall evaluate the  
4 overall and cumulative effects of an action.  
5
- 6 (b) In determining whether an action may have a significant effect on the environment, the  
7 agency shall consider every phase of a proposed action, the expected consequences,  
8 both primary and secondary, and the cumulative as well as the short-term and long-term  
9 effects of the action. In most instances, an action shall be determined to have a  
10 significant effect on the environment if **it is likely to**<sup>384</sup>:
- 11 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~  
12 ~~cultural resource~~ Irrevocably **commits** ~~commit~~<sup>385</sup> a natural **or cultural**<sup>386</sup>  
13 ~~resource~~<sup>387</sup>;
- 14 (2) **Curtails** ~~Curtail~~ the range of beneficial uses of the environment;
- 15 (3) **Conflicts** ~~Conflict~~ with the state's ~~long-term~~ environmental policies or **long-term**  
16 **environmental**<sup>388</sup> goals and guidelines as expressed in chapter 344, HRS, **or**  
17 **other laws**,<sup>389</sup> and any revisions thereof and amendments thereto, court  
18 decisions, or executive orders;
- 19 (4) **Substantially Adversely**<sup>390</sup> ~~affects~~ **Have a substantial adverse effect on**<sup>391</sup> the  
20 economic ~~welfare~~, ~~or~~ social welfare, ~~or~~ cultural practices<sup>392</sup> of the community or  
21 State;
- 22 (5) **Substantially affects** **Have a substantial adverse effect on**<sup>393</sup> public health;

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<sup>383</sup> Housekeeping.

<sup>384</sup> While section 5 of chapter 345, HRS, provides that an EIS is required for an action that "may" have a significant effect, the Supreme Court of Hawaii has interpreted the word "may" to mean "likely". For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will "likely" have a significant effect on the environment.

<sup>385</sup> Housekeeping. (Makes each item read grammatically from the revised lead in language "is likely to") and revises language to match the definition of "significant effect" in Section 343-2, HRS.

<sup>386</sup> Reinserts language regarding loss or destruction of cultural resources.

<sup>387</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

<sup>388</sup> Revises language to match the definition of "significance **significant effect**" in Section 343-2, HRS.

<sup>389</sup> Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>390</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>391</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>392</sup> Revises language to match the definition of "significance" in ~~Section~~ **section** 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.

<sup>393</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

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Environmental Council

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

- 1 (6) ~~Involves~~ **Involve** secondary **adverse**<sup>394</sup> impacts, such as population changes or
- 2 effects on public facilities;
- 3 (7) ~~Involves~~ **Involve** a substantial degradation of environmental quality;
- 4 (8) Is individually limited but cumulatively has ~~considerable~~ **substantial adverse**<sup>395</sup>
- 5 effect upon the environment or involves a commitment for larger actions;
- 6 (9) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>396</sup> a rare, threatened,
- 7 or endangered species, or its habitat;
- 8 (10) ~~Detrimentially affects~~ **Have a substantial adverse effect on**<sup>397</sup> air or water quality
- 9 or ambient noise levels;
- 10 (11) ~~Affects~~ **Have a substantial adverse effect on**<sup>398</sup> or is likely to suffer damage by
- 11 being located in an environmentally sensitive area such as a flood plain, tsunami
- 12 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh
- 13 water, or coastal waters;
- 14 (12) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>399</sup> scenic vistas and
- 15 viewplanes identified in county or state plans or studies or,
- 16 (13) ~~Requires~~ **Require** substantial energy consumption.

18 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)

19  
20

<sup>394</sup> Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>395</sup> Retains the focus on "considerable effects" through the synonym "substantial effects" and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>396</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>397</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS and maintains uniformity with the threshold of "substantially adverse" used in this section.

<sup>398</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>399</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

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Environmental Council

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

1 **§11-200-13 Consideration of Previous Determinations**  
2 **and Accepted Statements**

3 (a) ~~Chapter 343, HRS, provides that whenever~~<sup>400</sup> Whenever an agency proposes to  
4 implement an action or receives a request for approval, the agency may consider and,  
5 when applicable and appropriate, incorporate by reference, in whole or in part, previous  
6 determinations of whether ~~a statement~~ an EIS is required, ~~such as exemption notices,~~  
7 ~~FONSIs, and EISPNs, EAs,~~<sup>401</sup> and previously accepted statements ~~EIS EISs~~<sup>402</sup>.

8  
9 (b) Previous determinations, ~~EAs,~~<sup>403</sup> and previously accepted statements ~~EISs~~ may be  
10 incorporated ~~into an exemption notice, EA, EISPN, or EIS,~~ by ~~applicants and~~ agencies  
11 ~~and applicants~~<sup>404</sup> whenever the information contained therein is pertinent ~~to the decision~~  
12 ~~at hand~~<sup>405</sup> and has logical relevancy and bearing to the ~~proposed~~ action ~~being~~  
13 ~~considered~~<sup>406</sup>.

14  
15 (c) Agencies ~~and applicants~~<sup>407</sup> shall not, without considerable pre-examination and  
16 comparison, use past determinations, ~~EAs,~~<sup>408</sup> and ~~previous previously accepted~~<sup>409</sup>  
17 ~~statement~~ ~~EISs~~ to apply to the action at hand. The ~~proposed~~ action ~~for which a~~  
18 ~~determination is sought~~<sup>410</sup> shall be thoroughly reviewed prior to the use of previous  
19 determinations, ~~EAs,~~<sup>411</sup> and previously accepted statements ~~EISs~~. Further, when  
20 previous determinations, ~~EAs,~~<sup>412</sup> and previous statements ~~EISs~~ are considered or  
21 incorporated by reference, they shall be substantially similar to and relevant to the  
22 ~~proposed~~ action ~~then being considered~~<sup>413</sup>.

23  
24 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
25  
26

400 ~~Removes the reference to chapter 343, HRS, so that the sentence is easier to read.~~

401 ~~Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.~~

402 ~~Housekeeping.~~

403 ~~Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.~~

404 ~~Housekeeping (word order).~~

405 ~~Removes unnecessary language and increases readability.~~

406 ~~Removes unnecessary language and clarifies that the action referenced is the proposed action.~~

407 ~~Clarifies that this subsection also applies to applicants preparing EISs.~~

408 ~~Clarifies that previously completed EAs may also be considered.~~

409 ~~Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.~~

410 ~~Removes unnecessary language and increases readability.~~

411 ~~Clarifies that previously completed EAs may also be considered.~~

412 ~~Clarifies that previously completed EAs may also be considered.~~

413 ~~Removes unnecessary language and increases readability.~~

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Environmental Council

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

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 **§11-200-14 General Provisions**

3 (a)<sup>414</sup> Chapter 343, HRS, directs that in both agency and applicant actions where statements  
4 EISs are required, the proposing agency or applicant<sup>415</sup> preparing party shall prepare the  
5 EIS, submit it for review and comments, and revise it, taking into account all critiques  
6 and responses. Consequently, the EIS process involves more than the preparation of a  
7 document; it involves the entire process of research, discussion, preparation of a  
8 statement, and review. The EIS process shall involve at a minimum:

- 9 (1)<sup>416</sup> ~~identifying~~ Identifying environmental concerns,
- 10 (2) Conducting no fewer than one EIS public scoping meeting<sup>417</sup> in the area  
11 affected by the proposed action.<sup>418</sup>
- 12 (3) ~~obtaining~~ Obtaining various relevant data,
- 13 (4) ~~conducting~~ Conducting necessary studies,
- 14 (5) ~~receiving~~ Receiving public and agency input,
- 15 (6) ~~evaluating~~ Evaluating alternatives, and
- 16 (7) ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing  
17 adverse impacts.

18 (b) To encourage ea<sup>419</sup> thorough and informed review of the EIS, the office shall devel<sup>420</sup> a  
19 distribution list of persons and agencies with jurisdiction or expertise in certain areas  
20 relevant to various actions and make it available to the proposing agency or applicant.<sup>419</sup>

21  
22 ~~An EIS is meaningless without the conscientious application of the EIS process as a whole, and~~  
23 ~~shall not be merely a self-serving recitation of benefits and a rationalization of the proposed~~  
24 ~~action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in~~  
25 ~~the planning and decision-making process. This shall assure an early open forum for discussion~~  
26 ~~of adverse effects and available alternatives, and that the decision-makers will be enlightened to~~  
27 ~~any environmental consequences of the proposed action prior to decision making~~<sup>420, 421</sup>

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

414 Housekeeping to reflect insertion of a second paragraph, now subsection (b), in this section.

415 Clarifies that the proposing agency or the applicant must perform the following actions.

416 Housekeeping. Breaks the paragraph up and helps to see clarify the minimum elements of the EIS process. Renumbers paragraphs based on addition of public scoping meeting.

417 Requires at least one public scoping meeting for an EIS.

418 Specifies where the scoping meeting must be held.

419 Inserts and modifies a provision from section 11-200-21, Distribution, that is proposed to be deleted. This provision was the only meaningful provision remaining in section 11-200-21 after the incorporation of other edits to the section. Distribution lists should, at a minimum, be used for the distribution of the draft and final EIS, and may be referred to for consultation with knowledgeable persons and agencies throughout the environmental review process.

420 Emphasizes that the EIS process is to occur before committing to a particular course of action.

421 Moved to section 11-200-1, Purpose, to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

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Environmental Council

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

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

- (a)<sup>422</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS without first requiring an EA, shall indicate in a concise manner:
- (1) Identification of the proposing agency or applicant;
  - (2) Identification of the accepting authority;
  - (3) The determination **to prepare an EIS**<sup>423</sup>;
  - (4) Reasons supporting the determination **to prepare an EIS**<sup>424</sup>;
  - (5) A description of the proposed action and its location;
  - (6) A description of the affected environment and include regional, location, and site maps;
  - (7) Possible alternatives to the proposed action;
  - (8) The proposing agency's or applicant's proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;
  - (9) The name, title, contact information, including the email address, physical address, and phone number of **a contact person an individual representative of the proposing agency or applicant who may be contacted** for further information.<sup>425/426</sup>
- (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>427</sup> citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft<sup>428</sup> EIS prior to the time the draft<sup>429</sup> EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. ~~At the discretion of the proposing agency or an applicant, a~~ A public scoping meeting ~~to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth~~ addressing the scope of the draft EIS ~~may~~ shall<sup>430</sup> be held within the thirty-day public review and comment period in subsection

<sup>422</sup> Creates a new paragraph and renumbers subsequent paragraphs.

<sup>423</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>424</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>425</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>426</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

<sup>427</sup> Housekeeping.

<sup>428</sup> Clarifies that the document is a draft EIS.

<sup>429</sup> Clarifies that the document is a draft EIS.

<sup>430</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

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Environmental Council

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

- 1 (bc),<sup>431</sup> provided that the proposing agency or applicant shall treat oral and written  
 2 comments received at such a meeting as indicated in subsection (d)<sup>432</sup>.  
 3  
 4 (bc) Upon publication of a preparation notice an EISPN in the periodic bulletin, agencies,  
 5 groups, or individuals shall have a period of thirty days from the initial issue  
 6 publication<sup>433</sup> date in which to request to become a consulted party and<sup>434</sup> to make  
 7 written comments regarding the environmental effects of the proposed action. Upon  
 8 written request by the consulted party and upon good cause shown, With good cause  
 9 the approving agency or accepting authority may extend the period for comments for a  
 10 period not to exceed thirty additional<sup>435</sup> days.<sup>436</sup>  
 11  
 12 (cd) — Upon receipt of the request, the proposing agency or applicant shall provide the  
 13 consulted party with a copy of the environmental assessment or requested portions  
 14 thereof and<sup>437</sup> the environmental impact statement preparation notice EISPN.  
 15 Additionally, the proposing agency or applicant may provide any other information it  
 16 deems necessary. The proposing agency or applicant may also contact other agencies,  
 17 groups, or individuals which it feels may provide pertinent additional information.<sup>438</sup>  
 18  
 19 (de) Any substantive<sup>439</sup> written<sup>440</sup> comments received by the proposing agency or applicant  
 20 pursuant to this section shall be responded to in writing and as appropriate, incorporated  
 21 into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS

<sup>431</sup> Housekeeping.

<sup>432</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer's interpretation recording of individual oral comments.

<sup>433</sup> Clarifies that thirty-day time period begins upon publication of the EISPN.

<sup>434</sup> Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

<sup>435</sup> Clarifies that the days are in addition to the first thirty-day period.

<sup>436</sup> Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period.

<sup>437</sup> Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.

<sup>438</sup> All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.

<sup>439</sup> Removes threshold of "substantive" and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.

<sup>440</sup> Adds written as a requirement for being responded to and reproduced in the draft EIS.



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Environmental Council

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

1 with the approving agency or accepting authority. Letters submitted **which that** contain  
 2 no comments on the project but only serve to acknowledge receipt of the document do  
 3 not require a written response. Acknowledgement of receipt of these items must be  
 4 included in the **final environmental assessment or<sup>441</sup> final statement draft EIS<sup>442</sup>. If a**  
 5 **number of written comments are identical or very similar, the proposing agency or**  
 6 **applicant may group the comments and prepare a single standard response for each**  
 7 **group. The name of each commentor shall be included with the grouped response. One**  
 8 **representative copy of identical or very similar comments may be included rather than**  
 9 **reproducing each comment.<sup>443</sup>**

10  
 11 **(f) A written summary of oral<sup>444</sup> comments made at any EIS public scoping meetings<sup>445</sup>**  
 12 **identifying those persons or agencies that provided oral comments shall be included in**  
 13 **the draft EIS prior to the filing of the draft EIS with the approving agency or accepting**  
 14 **authority.<sup>446/ 447</sup>**

15  
 16 **(g) A list of those persons or agencies who were consulted w<sup>448</sup> prior to filing the draft EIS**  
 17 **and had no comment shall be included in the draft EIS in a manner indicating that no**  
 18 **comment was provided.<sup>448</sup>**

19  
 20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

21

<sup>441</sup> Removes final EA requirement because a final EA may not have been prepared.

<sup>442</sup> Replaces final EIS with draft EIS, mirroring the previous sentence.

<sup>443</sup> Mirrors language inserted regarding written comments in Section 11-200-17(p) addressing voluminous and repetitive comments.

<sup>444</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>445</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).

<sup>446</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>447</sup> Addresses how proposing agencies and applicants should include oral comments received during the public scoping meeting required under this section into the draft EIS. This language mirrors the way oral comments received on the Draft EIS are to be included in Final EIS.

<sup>448</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.





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Environmental Council

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

1 **§11-200-16 Content Requirements**

2 ~~For draft Draft~~ and final EISs, ~~The environmental impact statement the document~~<sup>449</sup> shall  
3 contain an explanation of the environmental consequences of the proposed action, ~~pursuant to~~  
4 as required in section 11-200-17<sup>450</sup>. The contents shall fully declare the environmental  
5 implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably  
6 foreseeable<sup>451</sup> consequences of the action. In order that the public can be fully informed and  
7 that the ency can make a sound decision based upon the full range of responsible opinion  on  
8 environmental effects, ~~a statement~~ an EIS shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.

10  
11 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
12 343-6)

13  
14  
15

---

<sup>449</sup> Clarifies that Section section 11-200-16 applies to both draft and final EISs.

<sup>450</sup> Explicitly connects section 11-200-16 and section 11-200-17.

<sup>451</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.

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Environmental Council

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

1 **§11-200-17 Content Requirements; Draft Environmental**  
 2 **Impact Statement**

- 3 (a) The draft EIS, at a minimum, shall contain the information required in this section.  
 4
- 5 (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the  
 6 following:  
 7 (1) Brief description of the action;  
 8 (2) Significant beneficial and adverse impacts (including cumulative impacts and  
 9 secondary impacts);  
 10 (3) Proposed mitigation measures;  
 11 (4) Alternatives considered;  
 12 (5) Unresolved issues; ~~and~~  
 13 (6) Compatibility with land use plans and policies, and listing of permits or  
 14 approvals; ~~and~~<sup>452</sup>  
 15 (7) A list of relevant documents, including EAs and EISs, used to identify potential  
 16 segmentation or cumulative impacts.<sup>453</sup>  
 17
- 18 (c) The draft EIS shall contain a table of contents.  
 19
- 20 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~  
 21 the<sup>454</sup> purpose and need for the proposed action.  
 22
- 23 (e) The draft EIS shall contain a program or<sup>455</sup> project description which that shall include  
 24 the following information, but need not supply extensive detail beyond that needed for  
 25 evaluation and review of the environmental impact:  
 26 (1) A detailed map (preferably a United States Geological Survey topographic map,  
 27 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a  
 28 related regional map;  
 29 (2) ~~Statement of objectives~~ Objectives of the proposed action<sup>456</sup>;  
 30 (3) General description of the action's technical, economic, social, cultural,<sup>457</sup> and  
 31 environmental characteristics;

---

<sup>452</sup> Housekeeping.

<sup>453</sup> This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.

<sup>454</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>455</sup> Clarifies that the proposed action could be either a program or a project.

<sup>456</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>457</sup> Adds "cultural" to the characteristics, in line with Act 50 (2000).

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Environmental Council

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

- 1 (4) Use of **public state or county**<sup>458</sup> funds or lands for the action;
- 2 (5) Phasing and timing of the<sup>459</sup> action;
- 3 (6) Summary of technical data, diagrams, and other information necessary to permit
- 4 an evaluation of potential environmental impact by commenting agencies and the
- 5 public; and
- 6 (7) Historic perspective.

7

8 (f) The draft EIS shall describe in a separate and distinct section reasonable<sup>460</sup>

9 alternatives ~~which that~~ could attain the objectives of the action ~~regardless of cost, in~~

10 ~~sufficient detail to explain why they were rejected~~<sup>461</sup> ~~and,~~<sup>462</sup> ~~for alternatives that were~~

11 ~~eliminated from detailed study, a~~ briefly discussion of the reasons for eliminating



12 ~~them~~<sup>463</sup>.<sup>464</sup> The section shall include a rigorous exploration and objective evaluation of

13 the environmental impacts of all such alternative actions.<sup>465</sup> Particular attention shall be

14 given to alternatives that might enhance environmental quality or avoid, reduce, or

15 minimize some or all of the adverse environmental effects, costs, and risks of the

16 action<sup>466</sup>. Examples of alternatives include:

- 17 (1) The alternative of no action;
- 18 (2) Alternatives requiring actions of a significantly different nature ~~which that~~ would
- 19 provide similar benefits with different environmental impacts;
- 20 (3) Alternatives related to different designs or details of the proposed action  ~~which~~
- 21 ~~that~~ would present different environmental impacts;
- 22 (4) The alternative of postponing  ion pending further study; and,
- 23 (5) Alternative locations for the proposed project action<sup>467</sup>.

24 In each case, the analysis shall be sufficiently detailed to allow the comparative

25 evaluation of the environmental benefits, costs, and risks of the proposed action and

26 each reasonable alternative. For alternatives that were eliminated from detailed study,

27 the section shall contain a brief discussion of the reasons for not studying those

<sup>458</sup> Aligns language with section 11-200-12.

<sup>459</sup> Housekeeping.

<sup>460</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>461</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>462</sup> Housekeeping.

<sup>463</sup> ~~Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.~~

<sup>464</sup> Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).

<sup>465</sup> Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.

<sup>466</sup> Clarifies that the effects, costs, and risks are related to the action.

<sup>467</sup> Clarifies that alternative locations should be included for both programs and projects.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 **alternatives in detail.**<sup>468</sup> For any agency actions, the discussion of alternatives shall  
 2 include, where relevant, those alternatives not within the existing authority of the agency.  
 3  
 4 (g) The draft EIS shall include a description of the environmental setting, including a  
 5 description of the environment in the vicinity of the action, as it exists before  
 6 commencement of the action, from both a local and regional perspective. Special  
 7 emphasis shall be placed on environmental resources that are rare or unique to the  
 8 region and the **program or**<sup>469</sup> project site (including natural or human-made resources of  
 9 historic, **cultural,**<sup>470</sup> archaeological, or aesthetic significance); specific reference to  
 10 related **programs or**<sup>471</sup> projects, public and private, existent or planned in the region shall  
 11 also be included for purposes of examining the possible overall cumulative impacts of  
 12 such actions. Proposing agencies and applicants shall also identify, where appropriate,  
 13 population and growth characteristics of the affected area, ~~and~~ any population and  
 14 growth assumptions used to justify the **proposed**<sup>472</sup> action, ~~and determine any~~<sup>473</sup>  
 15 secondary population and growth impacts resulting from the proposed action and its  
 16 alternatives. In any event, it is essential that the sources of data used to identify, qualify,  
 17 or evaluate any and all environmental consequences be expressly noted in the draft  
 18 EIS<sup>474</sup>.  
 19  
 20 (h) The draft EIS shall include a ~~statement~~ description<sup>475</sup> of the relationship of the proposed  
 21 action to land use and resource<sup>476</sup> plans, policies, and controls for the affected area.  
 22 Discussion of how the proposed action may conform or conflict with objectives and  
 23 specific terms of approved or proposed land use and resource<sup>477</sup> plans, policies, and  
 24 controls, if any, for the area affected shall be included. Where a conflict or inconsistency  
 25 exists, the ~~statement~~ draft EIS<sup>478</sup> shall describe the extent to which the agency or  
 26 applicant has reconciled its proposed action with the plan, policy, or control, and the  
 27 reasons why the agency or applicant has decided to proceed, notwithstanding the  
 28 absence of full reconciliation. The draft EIS shall also contain a list of necessary  
 29 approvals, required for the action, from governmental agencies, boards, or commissions  
 30 or other similar groups having jurisdiction. The status of each identified approval shall  
 31 also be described.

<sup>468</sup> Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).

<sup>469</sup> Clarifies that both programs and projects are referred to.

<sup>470</sup> Adds "cultural" in line with Act 50 (2000).

<sup>471</sup> Clarifies that both programs and projects in the regional shall be considered.

<sup>472</sup> Parallels use of "proposed" later in the sentence and distinguishes this "action" from "action" used previously in this paragraph.

<sup>473</sup> Housekeeping.

<sup>474</sup> Housekeeping.

<sup>475</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Uses "description" similar to other paragraphs.

<sup>476</sup> Includes natural resource plans such as water management plans.



<sup>477</sup> Includes natural resource plans such as water management plans.

<sup>478</sup> Clarifies that this applies to draft EISs.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1
- 2 (i) The draft EIS shall include a ~~statement~~ an analysis<sup>479</sup> of the probable impact of the
- 3 proposed action on the environment, and impacts of the natural or human environment
- 4 on the ~~project~~ action.<sup>480</sup> ~~which~~ This analysis<sup>481</sup> shall include consideration of all phases
- 5 of the action and consideration of all consequences on the environment; including direct
- 6 and indirect effects ~~shall be included~~<sup>482</sup>. The interrelationships and cumulative
- 7 environmental impacts of the proposed action and other related projects actions<sup>483</sup> shall
- 8 be discussed in the draft EIS. ~~It~~<sup>484</sup> ~~should be realized~~ The draft EIS should recognize<sup>485</sup>
- 9 that several actions, in particular those that involve the construction of public facilities or
- 10 structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may
- 11 well stimulate or induce secondary effects. These secondary effects may be equally
- 12 important as, or more important than, primary effects, and shall be thoroughly discussed
- 13 to fully describe the probable impact of the proposed action on the environment. The
- 14 population and growth impacts of an action shall be estimated if expected to be
- 15 significant, and an evaluation shall be<sup>486</sup> made of the effects of any possible change in
- 16 population patterns or growth upon the resource base, including but not limited to land
- 17 use, water, and public services, of the area in question. Also, if the proposed action
- 18 constitutes  a direct or indirect source of pollution as determined by any governmental
- 19 agency, necessary data regarding these impacts<sup>487</sup> shall be incorporated into the EIS.
- 20 The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and
- 21 (m).
- 22
- 23 (j) The draft EIS shall include in a separate and distinct section a description of the
- 24 relationship between local short-term uses of humanity's environment and the
- 25 maintenance and enhancement of long-term productivity.  The extent to which the
- 26 proposed action involves trade-offs among short-term and long-term gains and losses
- 27 shall be discussed. The discussion shall include the extent to which the proposed action
- 28 forecloses future options, narrows the range of beneficial uses of the environment, or
- 29 poses long-term risks to health or safety. In this context, short-term and long-term do not
- 30 necessarily refer to any fixed time periods, but shall be viewed in terms of the
- 31 environmentally significant consequences of the proposed action.
- 32

<sup>479</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.

<sup>480</sup> Clarifies that this sentence applies to both projects and programs.

<sup>481</sup> Stylistic change to increase readability.

<sup>482</sup> Housekeeping.

<sup>483</sup> Clarifies that both projects and programs should be considered.

<sup>484</sup> Housekeeping. (v0.1 omitted strikethrough)

<sup>485</sup> Housekeeping.

<sup>486</sup> Housekeeping.

<sup>487</sup> Clarifies what the data should be about.

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## Environmental Council

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

- 1 (k) The draft EIS shall include in a separate and distinct section a description of all  
 2 irreversible and irretrievable commitments of resources that would be involved in the  
 3 proposed action should it be implemented. Identification of unavoidable impacts and the  
 4 extent to which the action makes use of non-renewable resources during the phases of  
 5 the action, or irreversibly curtails the range of potential uses of the environment shall  
 6 also be included. The possibility of environmental accidents resulting from any phase of  
 7 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~  
 8 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~  
 9 ~~natural and cultural resources committed to loss or destruction by the action.~~  
 10 "Resources" shall be construed to also mean the natural and cultural resources  
 11 irreversibly and irretrievably committed to the action and not only to the labor and  
 12 materials committed to the action.<sup>488</sup>  
 13
- 14 (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot  
 15 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats  
 16 to public health, or other consequences adverse to environmental goals and guidelines  
 17 established by environmental response laws, coastal zone management laws, pollution  
 18 control and abatement laws, and environmental policy ~~such as that~~ including  
 19 those<sup>489</sup> found in chapters 128D (Environmental Response Law), 205A (Coastal Zone  
 20 Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D  
 21 (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F  
 22 (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste  
 23 Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used  
 24 Oil), 342L (Underground Storage Tanks), ~~342N,~~<sup>490</sup> 342P (Asbestos and Lead), and 344  
 25 (State Environmental Policy)<sup>491</sup>, HRS, shall be included, including ~~and~~<sup>492</sup> those effects  
 26 discussed in other actions subsections of this paragraph section<sup>493</sup> ~~which that~~ are  
 27 adverse and unavoidable under the proposed action must be addressed in the draft  
 28 EIS<sup>494</sup>. Also, the rationale for proceeding with a proposed action, notwithstanding  
 29 unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate  
 30 what other interests and considerations of governmental policies are thought to offset  
 31 the adverse environmental effects of the proposed action. The ~~statement~~ EIS shall also  
 32 indicate the extent to which these stated countervailing benefits could be realized by  
 33 following reasonable alternatives to the proposed action that would avoid some or all of  
 34 the adverse environmental effects.  
 35

<sup>488</sup> Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

<sup>489</sup> Housekeeping.

<sup>490</sup> Repealed.

<sup>491</sup> Provides titles of each chapter referenced.

<sup>492</sup> Housekeeping.

<sup>493</sup> Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

<sup>494</sup> Housekeeping. Replaces "shall be included", which was deleted in v0.1.



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## Environmental Council

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

- 1 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or  
 2 reduce ~~impact~~ impacts<sup>495</sup>, including provision for compensation for losses of cultural,  
 3 community, historical, archaeological, fish and wildlife resources, including the  
 4 acquisition of land, waters, and interests therein. Description of any mitigation measures  
 5 included in the action plan to reduce significant, unavoidable, adverse impacts to  
 6 insignificant levels, and the basis for considering these levels acceptable shall be  
 7 included. Where a particular mitigation measure has been chosen from among several  
 8 alternatives, the measures shall be discussed and reasons given for the choice made.  
 9 ~~Included~~ The draft EIS shall include, where possible ~~and appropriate~~<sup>496</sup>, should  
 10 ~~be~~<sup>497</sup> specific reference to the timing of each step proposed to be taken in the any<sup>498</sup>  
 11 mitigation process, what performance bonds, if any, may be posted, and what other  
 12 provisions are proposed to assure that the mitigation measures will in fact be taken.  
 13
- 14 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved  
 15 issues and contains either a discussion of how such issues will be resolved prior to  
 16 commencement of the action, or what overriding reasons there are for proceeding  
 17 without resolving the problems issues<sup>499</sup>.  
 18
- 19 (o) The draft EIS shall include a separate and distinct section that contains a list identifying  
 20 all governmental agencies, other organizations and private individuals consulted in  
 21 preparing the statement, and the identity of the persons, firms, or agency preparing the  
 22 statement, by contract or other authorization, shall be disclosed.  
 23
- 24 (p) The draft EIS shall include a separate and distinct section that contains:  
 25 (1)<sup>500</sup> reproductions Reproductions of all substantive written comments and responses  
 26 made during the ~~consultation process~~ thirty-day consultation period pursuant to  
 27 section 11-200-15, and responses to those comments and a summary of any EIS  
 28 public scoping meetings.<sup>501</sup> If a number of comments are identical or very similar,  
 29 the proposing agency may group the comments and prepare a single standard  
 30 response for each group. The name of each commentor shall be included with  
 31 the grouped response. One representative copy of identical or very similar  
 32 comments may be included rather than reproducing each comment<sup>502</sup> ~~;~~ and a

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<sup>495</sup> Housekeeping.<sup>496</sup> Removes redundant language.<sup>497</sup> Housekeeping.<sup>498</sup> Changes reference to "any" mitigation measure process that may result from the analysis.<sup>499</sup> Aligns language throughout sentence to reference "issues" rather than "issues" and "problems".<sup>500</sup> Introduces subsections to increase clarity.<sup>501</sup> Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).<sup>502</sup> Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.



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

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(2) A summary of oral<sup>503</sup> comments made at any EIS public scoping meetings<sup>504</sup> that identifies those persons or agencies that provided oral comments.<sup>505</sup> A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.<sup>506</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5, 343-6)

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<sup>503</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>504</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings). This sentence replicates the one deleted from subsection (p)(1) and creates another new subsection in order to distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting.

<sup>505</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>506</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

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Environmental Council

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

## 1 **§11-200-18 Content Requirements; Final Environmental**

## 2 **Impact Statement**

3 The final EIS shall consist of:

- 4 (1) The draft EIS prepared in compliance with section 11-200-17, as<sup>507</sup> revised to  
 5 incorporate substantive<sup>508</sup> comments received during the ~~consultation and~~<sup>509</sup>  
 6 review processes;
- 7 (2) Reproductions of all ~~letters~~ written comments received ~~containing substantive~~  
 8 ~~questions, comments, or recommendations and, as applicable, summaries of any~~  
 9 ~~scoping meetings held during the ~~consultation and~~<sup>510</sup> review processes<sup>511</sup>;~~  
 10 provided that if a number of written comments are identical or very similar, one  
 11 representative copy of identical or very similar comments may be included rather  
 12 than reproducing each comment;<sup>512</sup>
- 13 (3) A list of persons, organizations, and public agencies commenting on the draft  
 14 EIS;
- 15 (4) The responses of the ~~applicant or~~ proposing agency or applicant<sup>513</sup> to each  
 16 ~~substantive question, comment, or recommendation~~ written comments<sup>514</sup>  
 17 received in the review and consultation processes, provided that if a number of  
 18 written comments are identical or very similar, the proposing agency or applicant  
 19 may group the comments and prepare a single standard response for each  
 20 group. The name of each commentor shall be included with the grouped  
 21 response;<sup>515</sup> ~~;~~<sup>516</sup>

<sup>507</sup> Connects this section with the previous section content requirements.

<sup>508</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>509</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>510</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>511</sup> Aligns language with the EISPN and draft EIS requirements.

<sup>512</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>513</sup> Place "proposing agency" before "applicant".

<sup>514</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.


<sup>515</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>516</sup> Housekeeping.

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

- 1 **(5)** A written summary of oral comments made at any public hearings<sup>517</sup> identifying
- 2 those persons or agencies that provided oral comments;<sup>518</sup>
- 3 **(6)** A list of those persons or agencies who were consulted with  preparing the final
- 4 EIS and had no comment shall be included in the final EIS in a manner
- 5 indicating that no comment was provided;<sup>519</sup>; and
- 6 **(57)** The text of the final EIS which shall be<sup>520</sup> written in a format which that allows the
- 7 reader to easily distinguish changes made to the text of the draft EIS.

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5, 343-6)

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<sup>517</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

<sup>518</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments. A list of these persons and agencies is sufficient.

<sup>519</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

<sup>520</sup> Housekeeping.

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Environmental Council

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

**§11-200-19 Environmental Impact Statement Style**

(a)<sup>521</sup> In developing the draft and final<sup>522</sup> EIS, preparers<sup>523</sup> proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government<sup>524</sup> decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail<sup>525</sup> of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement an EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to action instituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project<sup>526</sup> over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

<sup>521</sup> Adding a new paragraph requires adding paragraph identifiers.

<sup>522</sup> Clarifies that this section applies to draft and final EISs.

<sup>523</sup> Removes introduction of a new term and replaces it with terms used consistently in the regulations. "proposing agencies and applicants".

<sup>524</sup> Global edit to reduce confusion regarding the meaning of "public".

<sup>525</sup> Removes "detail" because "detail" is already discussed as being commensurate with the potential for impact.

<sup>526</sup> Change "project or program" to "program or project".

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out in conformance with the conditions and mitigation measures presented in the EIS may require no or limited further review.<sup>527</sup>

(c) In preparing any EIS, Care care<sup>528</sup> shall be taken to concentrate on important issues and to ensure that the statement EIS<sup>529</sup> remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.

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

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<sup>527</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

<sup>528</sup> Stylistic change to provide more clarity.

<sup>529</sup> Housekeeping.

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

**§11-200-20 Filing of an Environmental Impact Statement**

(a) The proposing agency or applicant shall file the original (signed)<sup>530</sup> draft EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>531</sup>. Simultaneously, a minimum number of four copies of<sup>532</sup> the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed)<sup>533</sup> final EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>534</sup>. Simultaneously, four copies of<sup>535</sup> the final EIS shall be filed with the office.

~~(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.~~<sup>536</sup>

~~(d)~~<sup>537</sup> The proposing agency or applicant shall sign and date the original copy of<sup>538</sup> the draft or final EIS and shall indicate that the statement EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate.

(d) The office shall be responsible for the publication of the notice of availability of the draft and final EIS in its bulletin.<sup>539</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

<sup>530</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>531</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>532</sup> OEQC only needs one copy, not four.

<sup>533</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>534</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>535</sup> OEQC only needs one copy, not four.

<sup>536</sup> Removes the paragraph because the language is unnecessary.

<sup>537</sup> Renumbers the paragraph.

<sup>538</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>539</sup> Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.

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Environmental Council

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

1 **§11-200-21 Distribution<sup>540</sup>**

2 The office shall be responsible for the publication of the notice of availability of the EIS in its  
3 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with  
4 jurisdiction or expertise in certain areas relevant to various actions) and make it available to the  
5 proposing agency or applicant.<sup>541</sup> and a list of public depositories, which shall include public  
6 libraries, where copies of the statements shall be available, and to the extent possible, the  
7 The<sup>542</sup> proposing agency or applicant shall make copies of<sup>543</sup> the EIS available to individuals  
8 requesting the EIS. The office's distribution list may be developed cooperatively among the  
9 applicant or proposing agency, the accepting authority, and the office; provided that<sup>544</sup> the office  
10 shall be responsible for determining the final list. The applicant or proposing agency shall  
11 directly distribute the required copies to those on the distribution list after the office has verified  
12 to the applicant or proposing agency the accuracy of the distribution list. For final statements,  
13 the agency or applicant shall give the commenter an option of requesting a copy of the final EIS  
14 or portions thereof.<sup>545/546</sup>

15  
16 [~~Eff 12/6/85; am and comp AUG 31 1996~~] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-5,  
17 343-6)

<sup>540</sup> ~~Deletes section because, due to the availability of the bulletin online, it is no longer necessary to specify the distribution process in such detail and to require distribution of paper copies of draft and final EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations. The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20, Filing, and the requirement for the office to produce and make available a distribution list has been slightly modified and moved to subsection (b) in section 11-200-14, General Provisions.~~

<sup>541</sup> ~~Removes the requirement for proposing agencies or applicants to verify a distribution list with the office. Electronic distribution of the documents and online availability of a distribution list developed by the office meet the objectives of this requirement more efficiently.~~

<sup>542</sup> ~~Removes outdated depositories requirement as all documents and determinations are available online to anyone.~~

<sup>543</sup> ~~Removes unnecessary language. The EIS will primarily be made available electronically, whereas "copies" implies a paper version.~~

<sup>544</sup> ~~Housekeeping.~~

<sup>545</sup> ~~Removes outdated requirement to provide the commenter with an option to request the document or a portion of it as all documents and determinations are available online to anyone.~~

<sup>546</sup> ~~Modernizes the distribution process. The office is required under chapter 343 to produce and distribute the bulletin. This process is now electronic and all published environmental review documents and determinations are available freely online. Because information is now available online, the concern that agencies and members of the public would not have notice of or access to the documents without a hard copy of the documents is no longer applicable.~~



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-22 Public Review of Environmental Impact**  
 2 **Statements and Addenda to Draft Environmental Impact**  
 3 **Statements Public Review and Response Requirements**  
 4 **for Draft EISs and Addenda**<sup>547</sup>

- 5 (a) Public review shall not substitute for early and open discussion with interested persons  
 6 and agencies;<sup>548</sup> concerning the environmental impacts of a proposed action. Review of  
 7 the draft<sup>549</sup> EIS, shall serve to provide the public and other agencies an opportunity to  
 8 discover the extent to which a proposing agency or applicant has examined  
 9 environmental concerns and available alternatives.
- 10
- 11 (b) The period for public review and for submitting written comments shall commence ~~as of~~  
 12 ~~from~~ the date ~~that~~<sup>550</sup> notice of availability of the draft EIS is initially issued in the periodic  
 13 bulletin and shall continue for a period of forty-five days. Written comments to the  
 14 approving agency or accepting authority, whichever is applicable, with a copy of the  
 15 comments to the ~~applicant or~~ proposing agency ~~or applicant~~<sup>551</sup>, shall be received or  
 16 postmarked to the approving agency or accepting authority, within ~~said the~~<sup>552</sup> forty-five-  
 17 day comment<sup>553</sup> period. Any comments outside of the forty-five day comment period  
 18 need not be ~~considered or~~ responded to ~~nor considered~~<sup>554</sup>
- 19
- 20 (c) The proposing agency or applicant shall respond ~~in writing~~<sup>555</sup> to the comments received  
 21 or postmarked during the forty-five-day review period and incorporate the comments and  
 22 responses in the final EIS. The response to comments shall include:
- 23 (1) Point-by-point discussion of the validity, significance, and relevance of  
 24 comments; and
- 25 (2) Discussion as to how each comment was evaluated and considered in ~~planning~~  
 26 ~~the proposed action~~ preparing the final EIS<sup>556</sup>.
- 27 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.  
 28 ~~Response letters reproduced in the text of the final EIS~~<sup>557</sup> The response shall indicate

547 Rephrases title so that it is clearer that the whole section is about draft EISs.

548 Housekeeping.

549 Clarifies that the document is a draft EIS.

550 Housekeeping."

551 Place "proposing agency" before "applicant".

552 Housekeeping.

553 Clarifies that the forty-five days is for the comment period.

554 Stylistic change to increase readability.

555 Removes phrase because the response must be in the final EIS, which is written.

556 Focus on how the comment is addressed in the final EIS rather than just action.

557 Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 verbatim changes that have been made to the text of the draft EIS. The response shall  
 2 describe the disposition of significant environmental issues raised (e.g., revisions to the  
 3 proposed project action<sup>558</sup> to mitigate anticipated impacts or objections, etc.). In  
 4 particular, the issues raised when the applicant's or proposing agency's or applicant's<sup>559</sup>  
 5 position is at variance with recommendations and objections raised in the comments  
 6 shall be addressed in detail, giving reasons why specific comments and suggestions  
 7 were not accepted, and factors of overriding importance warranting an override of the  
 8 suggestions. If a number of comments are identical or very similar, the proposing agency  
 9 or applicant may group the comments and prepare a single standard response for each  
 10 group. The comments must be attached to the final EIS regardless of whether the  
 11 agency or applicant believes they merit individual discussion in the body of the final  
 12 EIS.<sup>560</sup>

13  
 14 (d) An addendum document<sup>561</sup> to a draft environmental impact statement EIS shall  
 15 reference the original draft environmental impact statement EIS to which<sup>562</sup> it attaches  
 16 ~~to~~<sup>563</sup> and comply with all applicable filing, public review, and comment requirements set  
 17 forth in subchapter 7.

18  
 19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

20  
 21  
 22

---

<sup>558</sup> Provides clarity that revisions may be made to a project or a program.

<sup>559</sup> Place "proposing agency's" before "applicant's".

<sup>560</sup> Because the responses are included in the final EIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome and without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a, and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>561</sup> Removes the word document as it is unnecessary.

<sup>562</sup> Housekeeping.

<sup>563</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-23 Acceptability**

(a) Acceptability of ~~a statement~~ a final EIS<sup>564</sup> shall be evaluated on the basis of whether the ~~statement~~ final EIS<sup>565</sup>, in its completed form, represents an informational instrument which that fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,<sup>566</sup> and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A ~~statement~~ final EIS<sup>567</sup> shall be deemed to be an acceptable document by the accepting authority or approving agency only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the ~~statement~~ EIS, from proposal of the action to publication of the final EIS,<sup>568</sup> have all been completed satisfactorily as specified in this chapter;

(2) The content requirements described in this chapter have been satisfied; and

(3) Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been appropriately<sup>569</sup> ~~incorporated in~~ into the statement final EIS<sup>570</sup>, and comments and responses have been appended to the final EIS<sup>571</sup>.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>572</sup> authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>573</sup> authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or non-acceptability<sup>574</sup> of the proposing agency's statement EIS. In the event that the action involves ~~both~~ state and county lands ~~or~~, state or county funds, or both state and county lands and state and

<sup>564</sup> Clarifies that the document is a final EIS.

<sup>565</sup> Clarifies that the document is a final EIS.

<sup>566</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

<sup>567</sup> Clarifies that the document is a final EIS.

<sup>568</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

<sup>569</sup> Recognizes that not all comments are incorporated into an EIS.

<sup>570</sup> Clarifies that the document is a final EIS.

<sup>571</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.

<sup>572</sup> Housekeeping.

<sup>573</sup> Housekeeping.

<sup>574</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1            **county**<sup>575</sup> funds,<sup>576</sup> the governor or ~~an~~ the governor's<sup>577</sup> authorized representative shall  
 2            have final authority to accept the EIS.  
 3  
 4    (d)<sup>578</sup> Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate  
 5            accepting authority with both the proposing agency and the office. For any non-accepted  
 6            EIS, the notice shall contain specific findings and reasons for non-acceptance. The office  
 7            shall publish notice of the determination of acceptance or non-acceptance in the periodic  
 8            bulletin in accordance with section 11-200-3. Acceptance of a required statement shall  
 9            be a condition precedent to the use of state or county lands or funds in implementing the  
 10           proposed action.  
 11  
 12    (de) For actions proposed by applicants requiring approval from an agency, the applicant or  
 13           accepting authority, which is the approving agency,<sup>579</sup> may request the office to make a  
 14           recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If  
 15           the office decides to make a recommendation, it shall submit the recommendation to the  
 16           applicant and the approving agency within the ~~thirty-day~~<sup>580</sup> period requiring an approving  
 17           agency to determine the acceptability of the final EIS ~~and described in section 343-5(c),~~  
 18           HRS<sup>581</sup>. Upon acceptance or non-acceptance by the approving agency, the agency shall  
 19           notify the applicant of its determination, and provide specific findings and reasons. The  
 20           agency shall also provide a copy of this determination to the office for publication ~~of a~~  
 21           ~~notice~~<sup>582</sup> in the periodic bulletin. Acceptance of the required EIS shall be a condition  
 22           precedent to approval of the request and commencement of the proposed action. ~~An~~  
 23           ~~approving agency shall take prompt measures to determine the acceptability or non-~~  
 24           ~~acceptability of the applicant's statement.~~<sup>583</sup> The agency shall notify the applicant and  
 25           the office of the acceptance or non-acceptance of the final EIS within thirty days of the  
 26           final EIS submission to the agency<sup>584, 585</sup> provided that the thirty-day period may, at the  
 27           request of the applicant, be extended ~~at the request of the applicant~~<sup>586</sup> for a period not to  
 28           exceed fifteen days. The request shall be made to the accepting authority in writing.

<sup>575</sup> Provides clarity that "state and county" applies to both funds and lands.

<sup>576</sup> Clarifies cases situations where a proposed action has mixed state and county lands or funds or both lands and funds.

<sup>577</sup> Housekeeping.

<sup>578</sup> Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

<sup>579</sup> Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

<sup>580</sup> Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.

<sup>581</sup> Unnecessary language.

<sup>582</sup> Housekeeping.

<sup>583</sup> Redundant when read with the following sentence that sets forth a timeline.

<sup>584</sup> Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.

<sup>585</sup> Housekeeping.

<sup>586</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Upon receipt of an applicant's written<sup>587</sup> request for an extension of the thirty-day  
 2 acceptance period, the accepting authority shall notify the office and applicant in writing  
 3 of its decision to grant or deny the request. The notice shall be accompanied by a copy  
 4 of the applicant's request. An extension of the thirty-day acceptance period shall not be  
 5 allowed granted<sup>588</sup> merely for the convenience of the accepting authority. In the event  
 6 that the agency fails to make a determination of acceptance or non-acceptance for of<sup>589</sup>  
 7 the statement EIS<sup>590</sup> within thirty days of the receipt of the final EIS, then the statement  
 8 shall be deemed accepted.

9  
 10 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision  
 11 shall take the form of a revised draft EIS ~~document~~<sup>591</sup> which shall fully address the  
 12 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the  
 13 changes made. The requirements for filing, distribution, publication of availability for  
 14 review, acceptance or non-acceptance, and notification and publication of acceptability  
 15 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,<sup>592</sup>  
 16 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised  
 17 draft EIS and the subsequent revised final EIS<sup>593</sup> shall be evaluated for acceptability on  
 18 the basis of whether it satisfactorily addresses the findings and reasons for non-  
 19 acceptance.

20  
 21 (fg) A proposing agency or applicant may withdraw an EIS by simultaneously<sup>594</sup> sending a  
 22 ~~letter~~ written notification<sup>595</sup> to the office and to the accepting authority<sup>596</sup> informing the  
 23 office of the proposing<sup>597</sup> agency's or applicant's withdrawal. Subsequent resubmittal of  
 24 the EIS shall meet all requirements for filing, distribution, publication, review,  
 25 acceptance, and notification as a ~~new~~ draft<sup>598</sup> EIS.

26  
 27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 28  
 29

587 Connects to the previous sentence, clarifying that the request shall be made in writing.

588 Mirrors language within the provision.

589 Housekeeping.

590 Housekeeping.

591 Housekeeping.

592 Proposed to be deleted.

593 Added revised final EIS as the next step following a revised draft EIS.

594 Requires the office and accepting authority to be notified of the withdrawal at the same time.

595 Removes the requirement for a letter and simply requires written notification, such as by email.

596 Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

597 Clarifies that the agency withdrawing the proposal is the proposing agency.

598 Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

## 1 Subchapter 8 Appeals

2 **§11-200-24 Appeals to the Council**

3 An applicant, within sixty days after a<sup>599</sup> non-acceptance determination by the approving agency  
 4 under section 11-200-23<sup>600</sup> of a statement a final EIS<sup>601</sup> by an agency<sup>602</sup>, may ~~to choose to~~<sup>603/604</sup>  
 5 appeal the non-acceptance to the council, which within ~~thirty~~ sixty<sup>605</sup> days of receipt of the  
 6 appeal, shall notify the applicant of its determination to affirm the approving agency's non-  
 7 acceptance or to reverse it<sup>606</sup>. The council chairperson shall include the appeal on the agenda  
 8 of the council meeting immediately following the chairperson's receipt of the appeal. The council  
 9 shall be deemed to have received the appeal on the date of the meeting for which the appeal is  
 10 agendized.<sup>607</sup> In any affirmation or reversal of an appealed non-acceptance, the council shall  
 11 provide the applicant and the agency with specific findings and reasons for its determination.  
 12 The agency shall abide by the council's decision. An applicant may seek judicial review of the  
 13 council's determination under chapter 91, HRS.<sup>608</sup> ~~Pursuing an appeal by council does not~~  
 14 abrogate an applicant's option under section 343-7(e), HRS, to bring judicial action.<sup>609/610</sup>

15  
 16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 17  
 18

---

<sup>599</sup> Housekeeping.

<sup>600</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>601</sup> Clarifies that the document is a final EIS.

<sup>602</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>603</sup> ~~"Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.~~

<sup>604</sup> Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.

<sup>605</sup> Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

<sup>606</sup> Clarifies the Council's determination.

<sup>607</sup> Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

<sup>608</sup> Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council's decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council's procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council's decision under chapter 91-14, HRS.

<sup>609</sup> Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the cCouncil is unable to obtain quorum after an applicant appeals to the cCouncil.

<sup>610</sup> Judicial review of the appeal is now addressed in the previous sentence.



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
Environmental Council

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

1 Subchapter 9 National Environmental Policy Act

2 **§11-200-25 National Environmental Policy Act Actions:**  
3 **Applicability to Chapter 343, HRS**

4 When ~~the situation occurs where~~<sup>611</sup> a certain action will be subject both to the National  
5 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
6 Public Law 94-83; 42 U.S.C. § sections<sup>612</sup> 4321-4347) and chapter 343, HRS, the following shall  
7 occur:

8 (1) The applicant or agency, upon discovery of its proposed action being subject to  
9 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>613</sup>,  
10 shall ~~notify~~  the responsible federal agency, the office, and any agency with a  
11 definite ~~interest~~  in the action (as prescribed by chapter 343, HRS) ~~of the~~  
12 ~~situation.~~<sup>614</sup>

13  
14 (2) Where a federal agency determines that the proposed action is exempt<sup>615</sup> from  
15 review under the NEPA, the determination does not automatically constitute an  
16 exemption for the purposes of this chapter. In such cases, state and county  
17 agencies remain responsible for compliance with this chapter. However, the  
18 federal exemption may be considered in the state or county agency  
19 determination.<sup>616</sup>

20  
21 (3) Where a federal agency issues a FONSI and concludes that an statement EIS is  
22 not required under the NEPA, ~~the this~~ determination does not automatically  
23 constitute compliance with this chapter. In such cases, state and county agencies  
24 remain responsible for compliance with this chapter. However, the federal FONSI  
25 may be considered in the state or county agency determination.<sup>617</sup>

26

<sup>611</sup> Housekeeping.

<sup>612</sup> Housekeeping.

<sup>613</sup> Housekeeping.

<sup>614</sup> Housekeeping.

<sup>615</sup> The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

<sup>616</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

<sup>617</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (24) The National Environmental Policy Act NEPA<sup>618</sup> requires that draft<sup>619</sup> statements  
 2 EISs<sup>620</sup> be prepared by the responsible federal agency. In the case of actions for  
 3 which an EIS pursuant to the NEPA has been prepared by the responsible  
 4 federal agency, the draft and final federal statements EIS may be submitted to  
 5 comply with this chapter,<sup>621</sup> so long as the federal EIS satisfies the EIS content  
 6 requirements of this chapter and is not found to be inadequate under the NEPA  
 7 by a court; by the council on environmental quality (CEQ) (or is at issue in pre-  
 8 decision<sup>622/623</sup> referral to CEQ) under the NEPA regulations; or by the  
 9 administrator of the United States Environmental Protection Agency under  
 10 section 309 of the Clean Air Act, 41 U.S.C. 1857.<sup>624</sup> The responsible federal  
 11 agency's supplemental EIS requirements shall apply in the these<sup>625</sup> cases in  
 12 place of this chapter's supplemental EIS requirements.<sup>626</sup>  
 13  
 14 (5)<sup>627</sup> When the responsibility of preparing an EIS is delegated<sup>628</sup> to a state or county  
 15 agency, this chapter shall apply in addition to federal requirements under the  
 16 National Environmental Policy Act NEPA<sup>628</sup>. The office and state or  
 17 county<sup>629</sup> agencies shall cooperate with federal agencies to the fullest extent  
 18 possible to reduce duplication between federal and state requirements. This  
 19 cooperation, to the fullest extent possible, shall include joint environmental  
 20 impact statements EISs with concurrent public review and processing at both  
 21 levels of government. Where federal law has environmental impact statement  
 22 EIS requirements in addition to but not in conflict with this chapter, the office and  
 23 agencies shall cooperate in fulfilling the requirements so that one document shall  
 24 comply with all applicable laws. Where the NEPA process requires earlier or

<sup>618</sup> Housekeeping.

<sup>619</sup> Language is applicable to draft and final.

<sup>620</sup> Housekeeping.

<sup>621</sup> Based on Massachusetts' statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses this chapter's content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

<sup>622</sup> Housekeeping.

<sup>623</sup> Housekeeping.

<sup>624</sup> Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.

<sup>625</sup> Housekeeping.

<sup>626</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>627</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

<sup>628</sup> Housekeeping.



<sup>629</sup> Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 more stringent public review and processing, that process shall satisfy this  
2 chapter so that duplicative consultation or review do not occur.<sup>630</sup>

3  
4 (36) In all actions where the use of state land or funds is proposed, the final ~~statement~~  
5 EIS shall be submitted to the governor or a  uthorized representative. In all  
6 actions when the use of county land or funds is proposed and no use of state  
7 land or funds is proposed<sup>631</sup>, the final ~~statement~~ EIS shall be submitted to the  
8 mayor  an authorized representative. The final ~~statement~~ EIS in these  
9 instances shall first be accepted by the governor or mayor (or an authorized  
10 representative), prior to the submission of the same to the ~~Environmental~~  
11 ~~Protection Agency~~ or<sup>632</sup> responsible federal agency.

12  
13 (47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section<sup>633</sup> shall  
14 satisfy chapter 343, HRS, and no other ~~statement~~ EIS for the proposed action  
15 shall be required.

16  
17 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
18  
19  
20  
21  
22  
23  
24

<sup>630</sup> Addresses, for example, situations where a federal agency’s regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

<sup>631</sup> Clarifies the condition that requires the mayor or the mayor’s authorized representative to be the accepting authority.

<sup>632</sup> Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

<sup>633</sup> Changes language to “this section” instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Proposed New Subchapter X Programmatic EISs

2 **~~Proposed §11-200-XX Programmatic Environmental~~**  
3 **~~Impact Statements~~<sup>634/635</sup>**

4 ~~(a) — Proposing agencies may prepare a PEIS on the adoption of a comprehensive~~  
5 ~~plan prepared in accordance with relevant laws. Impacts of individual actions proposed~~  
6 ~~to be carried out in conformance with these adopted plans and regulations and the~~  
7 ~~thresholds or conditions identified in the PEIS may require no or limited further review.~~

8  
9 ~~(b) — Approving agencies may allow applicants to prepare a PEIS on the adoption of a~~  
10 ~~comprehensive plan prepared in accordance with relevant laws. Impacts of individual~~  
11 ~~actions proposed to be carried out in conformance with these adopted plans and~~  
12 ~~regulations and the thresholds or conditions identified in the PEIS may require no or~~  
13 ~~limited further review.~~

14  
15 ~~(c) — Upon acceptance of a final programmatic PEIS:<sup>636</sup>~~

16 ~~(1) — If a PEIS evaluates project-level issues such as precise project footprints or~~  
17 ~~specific design details, no further compliance with this chapter is required if a~~  
18 ~~subsequent proposed action will be carried out in conformance with the~~  
19 ~~conditions and thresholds established for such actions in the PEIS.~~

20 ~~(2) — Further chapter 343, HRS, environmental review must be prepared if a~~  
21 ~~subsequent proposed action was not addressed in the PEIS or the subsequent~~  
22 ~~proposed action exceeds the thresholds evaluated in the PEIS, and the~~  
23 ~~subsequent action may have a significant impact on the environmental. Further~~  
24 ~~review may be in the form of an EIS, EA, or exemption, for specific components~~  
25 ~~of the proposal.~~

26  
27  
28  
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<sup>634</sup> ~~Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.~~

<sup>635</sup> ~~Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.~~

<sup>636</sup> ~~Housekeeping.~~

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **~~Proposed §11-200-XX Content Requirements; Draft~~**  
2 **~~Programmatic Environmental Impact Statement~~<sup>637/638</sup>**

3 ~~(a) The content requirements for a PEIS shall be the same as those for an EIS set~~  
4 ~~forth in subchapter 7, with the understanding that the level of detail in a PEIS may be~~  
5 ~~less than that of a project-level<sup>639</sup> EIS. The level of detail in a PEIS must be sufficient to~~  
6 ~~allow informed choice among planning-level alternatives and to develop broad mitigation~~  
7 ~~strategies. A PEIS should examine the interaction among proposed projects or plan~~  
8 ~~elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also~~  
9 ~~includes an examination of alternatives.~~

10  
11 ~~(b) The PEIS may be broader and more general than a project-level EIS and omit~~  
12 ~~evaluating project-level issues that are not yet ready for decision at the planning level, or~~  
13 ~~it may evaluate project-level issues such as precise project footprints or specific design~~  
14 ~~details.~~

15  
16 ~~(c) A PEIS should discuss the logic and rationale for the choices advanced. It may~~  
17 ~~also include an assessment of specific impacts, if such details are available,<sup>640</sup> and~~  
18 ~~specific mitigation measures. It may be based on conceptual information in some cases.~~  
19 ~~It may discuss in general terms the constraints and sequences of events likely to result~~  
20 ~~in<sup>641</sup> any narrowing of future options. It may present and analyze in general terms~~  
21 ~~hypothetical scenarios that are likely to occur.~~  
22

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<sup>637</sup> Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.

<sup>638</sup> Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

<sup>639</sup> Uses consistent language to distinguish between project-level EISs and program-level EISs.

<sup>640</sup> Housekeeping.

<sup>641</sup> Increases readability.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 10 Supplemental Statements

2 **§11-200-26 Supplemental EIS<sup>642</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  
 12 prepared and reviewed as provided by this chapter.<sup>643</sup> unless:  
 13  
 14 (1) — The project has changed substantively in the following characteristics: size,  
 15 scope, use, location or timing, among other things, which may have a significant  
 16 effect; or<sup>644</sup>  
 17 (2) — New information indicating significant effects, which was not known and could not  
 18 have been known at the time the EIS was accepted as complete, becomes  
 19 available.<sup>645</sup>  
 20  
 21 (b) — In the case of newly discovered information, the decision to require preparation of a  
 22 supplemental EIS must be based on the following criteria:  
 23 (1) — The information can be from any source.  
 24 (2) — The information must be newly discovered. It cannot be information that could  
 25 have been included in comments filed in the original draft EIS or final EIS.  
 26 (3) — The information must be important, indicating probably<sup>646</sup>significant  
 27 environmental impacts.  
 28 (4) — The information must not have been addressed in the prior EIS, or must have  
 29 been inadequately addressed.<sup>647</sup>  
 30  
 31 (c) As long as there is no change in a proposed action or new information indicating  
 32 significant effects resulting in individual or cumulative impacts not originally disclosed,

<sup>642</sup> Clarifies in the title that this is about supplemental EISs (to distinguish it this section from those regarding regular EISs and programmatic EISs).

<sup>643</sup> Restores original SEIS section language.

<sup>644</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

<sup>645</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

<sup>646</sup> Housekeeping.

<sup>647</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge could can be used as a reason to require a supplemental EIS.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 the ~~statement~~ EIS associated with that action shall be deemed to comply with this  
2 chapter.

3

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

5

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-27 Supplemental EIS<sup>648</sup> Determination of**  
 2 **Applicability**

3 The accepting authority or approving agency in coordination with the original accepting authority  
 4 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
 5 period of five years has elapsed since the acceptance of the final EIS, and the ~~project or~~  
 6 program program or project<sup>649</sup> has not substantially commenced, the accepting authority or  
 7 approving agency shall formally ~~re-evaluate~~ the need for a supplemental ~~statement~~ EIS and  
 8 make a determination of whether a supplemental ~~statement~~ EIS<sup>650</sup> is required. A written  
 9 summary of this evaluation and the<sup>651</sup> This determination will be submitted to the office for  
 10 publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public  
 11 review supplemental ~~statements~~ EISs whenever the proposed action for which ~~a~~ an<sup>652</sup>  
 12 ~~statement~~ EIS was accepted has been modified to the extent that new or different  
 13 environmental impacts are anticipated. A supplemental ~~statement~~ EIS shall be warranted when  
 14 the scope of an action has been substantially increased, when the intensity of environmental  
 15 impacts will be increased, when the mitigating measures originally planned ~~are will~~ not to be  
 16 implemented, or where new circumstances or evidence have brought to light different or likely  
 17 increased environmental impacts not previously dealt with.

18  
 19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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 22

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<sup>648</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>649</sup> Changes “project or program” to “program or project” to be consistent with the definition of action.

<sup>650</sup> Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

<sup>651</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

<sup>652</sup> Housekeeping.




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Environmental Council

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

1 **§11-200-28 Supplemental EIS<sup>653</sup> Contents**

2 The contents of the supplemental ~~statement~~ EIS shall be the same as required by this chapter  
3 for the EIS and may incorporate by reference unchanged material from the same  however, in  
4 addition, it shall fully document the proposed changes from the original EIS, including changes  
5 in ambient conditions or available information that have a bearing on a proposed action or its  
6 impacts, the positive and negative aspects of these changes, and shall comply with the content  
7 requirements of section 11-200-16 as they relate to the changes.

8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

10  
11  
12

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<sup>653</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-29 Supplemental EIS<sup>654</sup> Procedures**

2 The requirements of the thirty-day consultation, ~~file~~ public notice filing<sup>655</sup>, distribution, the forty-  
3 five-day public review, comments and response, and acceptance procedures, shall be the same  
4 for the supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.

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

7  
8  
9

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<sup>654</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>655</sup> Stylistic change to increase readability.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**Proposed §11-200-XX<sup>656</sup> Retroactivity**

(a) The rules shall apply immediately upon taking effect.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200 (2018), provided that:

(1) For EAs, if the draft EA was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and has not received a determination within a period of five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018). All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200 (2018).

(2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018).

(3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

(d) All exemptions issued after adoption of HAR chapter 11-200 (2018) must comply with HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a period of five years after the adoption of HAR chapter 11-200 (2018), after which time the agency must revise its list and seek concurrence from council.<sup>657</sup>

<sup>656</sup> Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or undergoing it at the time the revised rules take effect.

<sup>657</sup> Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 11 Severability

2 **§11-200-30 Severability**

3 If any provision of this chapter or the application thereof to any person or circumstance is held  
4 invalid, the invalidity shall not affect other provisions or applications of this chapter which can be  
5 given effect without the invalid provision or application; and to this end, the provisions of this  
6 chapter are declared to be severable.

7

8 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6, 343-8)

9

10 **Note**

11 Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact  
12 Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]  
13 Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the  
14 repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996  
15 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995,  
16 November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu  
17 Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii  
18 Tribune-Herald and Molokai Dispatch on October 12, 1995.

19

20 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It  
21 has not been compiled.

22

23



October 2, 2017

Aloha e Members of the Environmental Council,

Please consider this comment on version 2.0 of the proposed Hawaii Administrative Rules (HAR) chapter 11-200 on behalf of KAHEA: The Hawaiian Environmental Alliance. While we are generally pleased with changes from the version 1.0, we have serious concerns with proposed changes to HAR §11-200-7(1), which addresses segmentation of actions. **Please remove the proposed inclusion of "independent utility" as a limit to whether a project is considered improperly segmented.** HAR §11-200-7(1) (proposed v 2.0).

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Hawai'i is exceptional in having extended the "independent utility" factor for determining whether a project component or "segment" needs to be considered as part of a larger program or project. "Independent utility" is a more permissive test and has been used to justify carving up master planned projects such as development in Mākena, Maui into segments. First the developer built a hotel and commercial development, then carved off an adjacent makai second-home housing and more commercial retail for an environmental assessment (EA) (which would be used by hotel guests), and the developer also plans a second round of mauka housing and golf courses (which would be used by others in the development) to be addressed in another environmental disclosure document. Our point is that "independent utility" encourages developers to use a back door to Chapter 343's overarching purpose and directive of assessing environmental impacts at the "earliest practicable time."

Mailing Address  
P.O. Box 37368  
Honolulu, HI 96837

toll-free phone/fax  
877.585.2432

www.KAHEA.org  
kahea-alliance@hawaii.rr.com

Historically and in most other jurisdictions today, "independent utility" is a relatively more permissive test specifically in the context of federal highway projects. Federal Highway Administration (FHWA) projects were perhaps most affected by the implementation of NEPA after 1969. 42 U.S.C. § 4332. Between 1966 and 1969, 14 lawsuits were filed challenging federal highway projects. The total rose to 17 lawsuits in 1970. In 1971, 27 NEPA-based lawsuits against federal highways were filed. In 1972, 48 such lawsuits were filed. See Oliver A. Houck, *How'd We Get Divorced?: The Curious Case of NEPA and Planning*, 39 Env. L. Reporter 10645, 10645 n.5 (2009) citing Richard A. Liroff, *A National Policy for the Environment: NEPA and Its Aftermath* 34 (1976). Partly as a consequence of FHWA's unwieldy NEPA compliance burden, Congress (e.g., see Pub. L. No. 105-178 §1205(b) (1998)), courts and the federal agency itself

KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."

constructed a unique framework for assessing highways. Thus, FHWA regulations governing preparation of an EIS or FEA-FONSI included guidelines for segmentation including those “[h]av[ing] independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.” 23 C.F.R. § 771.111(f)(2). Accordingly, the use of “independent utility” in NEPA case law largely reflects its origins with highway projects. See *Sensible Traffic Alternatives & Res., Ltd. v. Fed. Transit Admin. of U.S. Dept. of Transp.*, 307 F.Supp.2d 1149 (D. Haw. 2004) (applying “independent utility” test to construction of bus transit system); *Lange v. Brinegar*, 625 F.2d 812, 816 (9th Cir. 1980) (highway segment would relieve congestion on presently congested state roads); *Daly v. Volpe*, 514 F.2d 1106 (9th Cir. 1975) (highway bypass had independent utility); *Save Barton Creek Ass’n v. Fed. Highway Admin.*, 950 F.2d 1129, 1141–42 (5th Cir. 1992) (portion of a highway loop had independent utility because it alleviated traffic, improved access to various areas, and connected major roadways). Although the independent utility test has been used to assess segmentation in non-highway actions, these cases are not representative of settled law. See *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105 (9th Cir. 2000), *abrogated by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

The Hawai‘i Supreme Court has directly applied the “independent utility” test only twice - once to determine a larger action was required to define the scope of environmental review and once in a case concerning telescope development on Haleakalā. *Kahana Sunset Owners Association v. County of Maui*, 86 Hawai‘i 66, 74, 947 P.2d 378, 386 (1997) (holding a drainage system had no independent utility apart from the larger development and therefore both were to be considered together); *Kilakila 'O Haleakala v. Univ. of Hawai'i & David Lassner*, 138 Hawai‘i 364, 379-80, 382 P.3d 176, 191-92 (2016) (holding a management plan had independent utility from a telescope project and therefore was not a component of the latter). These two applications does not represent a settled opinion on the meaning of “independent utility.” We urge the Council not to include this potentially controversial term in its rules.

Mahalo nui for the Council’s excellent work on the proposed rules. We are grateful for this opportunity to comment.

Me ke aloha,

Bianca Isaki, KAHEA: The Hawaiian- Environmental Alliance

**EIS RULES UPDATE**  
**DRAFT COMMENTS AND PROPOSED AMENDMENTS TO VERSION 0.2**  
**(September 5, 2017)**

## 11-200-2. Definitions and Terminology

**Comment 1.** Revise the definition of “EIS public scoping meeting” to allow scoping meetings to be held outside of the 30-day EISPN comment period.

“EIS public scoping meeting” means a meeting open to the public held by the proposing agency or applicant, or their representative, ~~within the thirty-day public consultation period described in section 11-200-15,~~ [inviting] that invites the participation of those agencies, citizen groups, and individuals reasonably believed to be potentially affected by the proposed action (including those who might not be in accord with the proposed action), to assist the preparing party in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS. ~~[Suggestions made at the EIS public scoping meeting are considered to be advisory and not mandatory.]~~

**Comment 2.** Delete the definition of “*substantial commencement*” and its use in the rules. Project which are subject to the EIS Rules vary widely, and this definition could be inapplicable, or unfair to certain projects. Courts have fairly determined “*substantial commencement*” on a case-by case basis. This definition has not been needed in the past, and could lead to unintended and unfair consequences. As discussed below, this definition is not necessary.

~~“Substantial commencement” means that [a] an applicant [project or program] action has reached the stage where its last approval has been granted and has advanced to the point where financial commitments are in place and scheduled and design is essentially complete, or, for [government programs] an agency action for which an approval is not required, the [project or program] program or project has advanced to the point where financial commitments are in place and scheduled and design is essentially complete.~~

**Comment 3.** Modify definition of “Supplemental EIS” to delete references to “substantial commencement.” The trigger for Supplemental EIS should remain the same,

“Supplemental [statement] EIS” means an [additional environmental impact statement] ~~updated~~ EIS prepared for an action ~~or project~~ for which [a statement] an EIS was previously accepted, ~~but which has yet to progress to substantial commencement and since acceptance the action, circumstances, or anticipated impacts have changed substantively in size, scope, intensity, use, location, or timing, among other things].~~



**Comment 4.** Define “cultural” and “cultural Practices.” In various parts of the amended rules, the term “cultural” and “cultural practices” has been added. These rules should include the definition of these terms so that it is clear what is being meant in each specific context.

**11-200-5. Agency Actions**

**Comment 5.** Clarify that county development and community plans referenced should be limited to plans that have land use designations with the force and effect of law and which require a formal amendment in order for a project to proceed. The Counties have been undertaking more community and regional planning efforts that are “aspirational” and not intended to have the effect of law and which should not be inadvertently referenced here.

(e) Any amendment to existing county general plans, however denominated, which may include, ~~[but not be limited to]~~ development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation, requires an ~~[environmental assessment]~~ EA or EIS; **provided that this subsection shall only apply to county general plans, development plans, or community plans which include land use designations with the force and effect of law and which require formal amendment in order for a project to proceed.** (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.)

**11-200-6. Applicant Actions**

**Comment 6.** Clarify that development and community plans referenced should be limited to plans that have land use designations with the force and effect of law and which require a formal amendment in order for a project to proceed. The Counties have been undertaking more community and regional planning efforts that are not intended to have the effect of law and which should not be inadvertently referenced here.

~~(2)~~(3) The two administrative categories are:

(A) Any amendment to existing county general plans, however denominated, which may include, but are not ~~[be]~~ limited to, development plans[,] or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation; **provided that this subsection shall only apply to county general plans, development plans, or community plans which include land use designations with the force and effect of law and which require formal amendment in order for a project to proceed.** (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and

**11-200-8. Exemption Notices**

**Comment 7.** Add an exemption for secondary actions involving infrastructure improvements within existing public rights-of-ways (HRS 343-5.5)

**(j) For any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from chapter 343, HRS; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required. As used in this sub-section:**

**"Discretionary consent" means:**

- (1) An action as defined in HRS section 343-2; or**
- (2) An approval from a decision-making authority in an agency, which approval is subject to a public hearing.**

**"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.**

**"Primary action" means an action outside of the highway or public right-of-way that is on private property.**

**"Secondary action" means an action involving infrastructure within the highway or public right-of-way.**

**11-200-26 Supplemental EIS General Provisions****11-200-27 Supplemental EIS Determination of Applicability**

**Comment 8.** Delete all proposed amendments. Retain all present provisions. For most applicant actions, the EIS serves as an environmental disclosure document to assist decision making relating to the applicant's proposed project. The basis for requiring a Supplemental EIS should be that the proposed action or project has substantively changed in regard to size, scope, use or location, and significant adverse environmental impacts attributable to these changes are anticipated that were not considered or addressed by the initial EIS. However, once the decisions which prompted the EIS have been rendered and the project has commenced, no Supplemental EIS should be applicable. For large projects requiring substantial capital investment and which are implemented over long time frames, there needs to be certainty and finality in the environmental review process. There should be no risk of further environmental review and related litigation once a project commences.

- Delete all proposed amendments.
- Retain all present provisions in 11-200-26 (establishes criteria to confirm that an accepted EIS has satisfied the requirements of Chapter 343) and 11-200-27 (relating to the determination on whether a supplemental EIS is required), as follows:

**§11-200-26 General Provisions.** A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no other statement for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the statement associated with that action shall be deemed to comply with this chapter.

**§11-200-27 Determination of Applicability.** The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

Prior comments to Version 0.1 are renewed and repeated, to the extent not addressed in Version 0.2.

**From:** Lee Sichter  
**To:** [Glenn Scott J.](#)  
**Cc:** [Sara Bolduc](#)  
**Subject:** Comments on 2.0  
**Date:** Saturday, October 7, 2017 9:51:07 AM

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Aloha Scott

Sara Bolduc and I have collaborated on providing the EC comments on draft 2.0. She took the first pass, and then gave it to me for review. As you see, we don't agree on everything, but hopefully our respective opinions will provide EC some food for thought.

*Page 19: Section 11-200-5 (a)*

*Sara: prefers "Region".*

*Lee: prefers "Area". According to Webster, an "area" is "a geographical region". A "region" is "a district without respect to boundaries" and "the vast or indefinite entirety of a space or area". "Area" suggests that the extent of effect can be or should be defined geographically as opposed to being indefinite in size.*

*Page 20: Section 11-200-5 (f)*

*Sara: Support*

*Lee: Support.*

*Page 20: Section 11-200-5 (g)*

*Sara: I am a strong supporter of community, however, the newly added language that says: "from the date the public becomes aware of the action, whichever is later" ostensibly could extend the judicial proceedings way beyond what I think is necessary. What if the public "become aware" after the 120<sup>th</sup> day? (could they not claim simply not being aware even for years under this language could they not?). Maybe I'm reading this wrong.*

*Lee: This is very troublesome for me on two levels. First, I've always been uncomfortable with a judicial review of who let the horses out of the barn. What's the point? Second, I'm uncomfortable with agencies going rogue. The example given about 'fire breaks' is a very good example, and it brings to mind the fire break that was needed in South Kohala near Puako about 20 years ago. There is a significant petroglyph field near Pauko, and if an agency decided to bulldoze it because they needed a fire break, how could anyone stop them?...judicial review after the deed is done doesn't cut it. (I think that no matter what the emergency, there should be consultation with FWS and SHPD. It's up to the agencies to develop a fast-track mechanism...that's not OEQC's problem.)*

*Page 23: Section 11-200-6 (b) (1) (F)*

*Sara: Move to (C). Seems should be right after (B). Or, no need for “and” at the end. (Housekeeping).*

*Lee: I disagree with you. Keep it where it is, at the end of the "geographic" list. Delete the "or" at D and add an "or" at E.*

*Page 24: Section 11-200-6 (b) (2) (F)*

*Sara: “May affect”: I am not understanding how to assess how helicopter facilities may “affect” nearby areas. Based on what? Not sure about my point here- just raised a flag.*

*Lee: I agree with you. There are three principal issues associated with a helicopter facility as I see it: the noise associated with the departure/arrival of helicopters, the traffic associated with the arrival of vehicles to a helicopter facility and their departure, and the storage of fuel at the facility. The helicopter provision was first added back in the day because of the persistence of a community action group called Citizens Against Noise and their complaints about helicopters flying over Kilauea. The concern has always been about noise and, to my knowledge, nothing more. Using "may" allows people to introduce the other two issues. I believe the helicopter issue should be treated as narrowly as possible...and should only be relevant for helicopters flying under the official FAA height restriction (which I believe is 500 feet). In other words, the issue should be the immediate noise impacts of helicopters as they depart and arrive at a landing facility, not their overflight of an area (region). Remember, I live across the bay from Kaneohe Marine Base Hawaii and those helicopters are so loud they shake the house...but that's a necessary evil. If EC sees this as a meritorious issue, then they could always add a time restriction (EA, if flights occur between 10pm and 7am).*

*Page 30: Section 11-200-8 (d)*

*Sara: Lists shall be reviewed periodically: I really like the idea, but “periodically” is very subjective. New language for agencies puts a burden on the council. EC will need to be ready for all these periodic reviews- make sure they have the capacity for that.*

*Lee: EC is fighting a real battle here. OEQC doesn't have the person-power to track all the agencies and bird-dog them. This provides some teeth, though none capable of chewing...but it's a start. It's a foot in the door (sorry to mix metaphors).*

*Page 30: Section 11-200-8 (g)*

*Sara: Same comment about judicial proceedings—“or from the date the public becomes aware of the exemption notice, whichever is later”.*

*Lee: Since my previous comment was so long, I decided to take up the public notice issue here. The standard has always been 'printed notification' as in the EN. But that's now changed with social media. OEQC is publishing alerts about the EN on Facebook for cryin' outloud!*

Just like when there used to be a rule about how many newspapers a public notice should be printed in, rather than debate when the public first becomes aware, we ought to say "120 calendar days from the date Notice of the Action was published in three forms of social media". (Facebook, Twitter, and whatever else is popular with under 30-somethings.)

*Page 39: 11-200-9.1 (C)*

*Sara: While I understand other review periods may be mandated by statute (they took out the one about correctional facilities), I think it would be good to provide a footnote with all the actions that have different comment periods here).*

*Lee: Agree.*

*Page 41: 11-200-XX (b) Environmental Assessment Style*

*Sara: Gosh this paragraph is lengthy...*

*Lee: I agree and disagree. Yes, it is lengthy, but it's a complicated subject and this section actually needs more meat on the bone. I have a real problem with the EC easing into the programmatic EA. First of all, it should only allow programmatic EISs. A programmatic EA is too vague for me, with too many opportunities for obscuring significant details. And such an EIS must be followed by more detailed EAs for each substantive element of the program.*

*Page 41: 11-200-XX (c) Environmental Assessment Style*

*Sara: Isn't this section superfluous or could be incorporated into (a)?*

*Lee: The XX section needs to be expanded and thought out some more...*

*Page 52: Section 11-200-12 (b)*

*Sara: The pervasive use of "substantial" is driving me crazy. I understand the difference between "adverse" and "substantial" but do not think "substantially adverse" is necessary. Revisit. What is an action will have a substantial effect but not an adverse effect? Is that rendered insignificant? Maybe play with "ands" and "ors" here.*

*Lee: Easily solved. EC should add a definition of "substantial" at its glossary, and get this matter dealt with once and for all!*

*Pages 55 and 57: Sections 11-200-14 (a) (2) and 11-200-15 (a) (8)*

*Sara: Scoping meeting: At first glance, this makes it seem (to me) as though a public meeting*

*is required prior to publishing the EISPN. This is in addition to the 30 and 45 day comment periods?*

Lee: I believe the text says 'within the 30-day period". But, I'd take a different tack here. 30-days or 45-days isn't really that long for a public group. If you're going to have a scoping requirement, then I think the OEQC should be directed to work with the Agency/Applicant to calendar a scoping meeting for the month prior to the official publication of the Notice. Once an applicant submits the paperwork to the Agency for processing, they should be off to the races...it's time to get their act together. That's the time to do the scoping meeting. This would afford the public adequate advance notice, without cutting into their review period.

*Page 55: Section 11-200-14 (b)*

*Sara: Really? The OEQC is adding to its tasks? I don't see why the agency or applicant can't do this on its own.*

Lee: The question is: how much will it cost to get on the list?

*Page 70: Section 11-200-19 (b)*

*Sara: So long again. Might be good to streamline.*

Lee: I have no problem with run-on paragraphs...I've written thousands of them myself!

*Page 70: Section 11-200-19 (c)*

*Sara: Section (a) covers this already.*

Lee: Agreed!

*Page 79: Section 11-200-24*

*Sara: I am not sure. I am not a legal expert and have never gone through the proceedings. Maybe this just made the process clearer. Just flagging it as I might need to understand this part better.*

Lee: This needs to be more clearly written. Perhaps a bulleted list of dates/milestones would help.

*Page 87: Section 11-200-27*

*Sara: This section suggests that a formal summary re-evaluating the need for a SEIS should*



*be submitted. As a lament, I would like to see this section clarified. What does a formal summary look like? A letter saying you intend on doing a SEIS? Just make more explicit. Maybe a form or template could be provided?*

Lee: I agree. This is a the Turtle Bay issue. I don't think the issue is content, its disclosure. And I agree with the approach.

*Page 90 Proposed Section 11-200-XX Retroactivity*

*Sara: Are the time periods sufficient? I think so but would like someone else's perspective.*

Lee: Seems to me to be more than adequate.

Mahalo for the opportunity.

Sara and Lee

*Lee Sichter LLC  
45024 Malulani Street #1  
Kaneohe, Hawaii 96744  
ph. [\(808\) 382-3836](tel:(808)382-3836)  
fax. [\(808\) 234-0872](tel:(808)234-0872)  
email. [leesichter@gmail.com](mailto:leesichter@gmail.com)  
web. [www.leesichter.com](http://www.leesichter.com)*

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*Mahalo*



300 Kuulei Rd. Unit A #281 \* Kailua, HI 96734 \* Phone/Fax (808) 262-0682 E-Mail: [htff3000@gmail.com](mailto:htff3000@gmail.com)

Environmental Council  
[oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov)

October 19, 2017

Working Draft of Proposed Revisions to HAR 11-200  
Environmental Impact Statement Rules Version 0.2

Hawaii's Thousand Friends has the following comments and recommendations.

1. Whenever county general plans, development plans, and community plans are mentioned add sustainable communities plans. The addition is necessary because the proposed Oahu General Plan revision recommends that sustainable communities plans be included in the charter.

**§11-200-2 Definitions and Terminology**

Add a definition for substantial adverse effect

**§110200-3 Periodic Bulletin**

Add a new section

(f) A list of agency exemptions and link to each agency's exemption list shall be published in the Environmental Notice twice a year.

**§11-200-5 Agency Actions**

(e) Line 2. To be consistent and avoid confusion *Sustainable Communities Plans* should be added after Development Plans.

(d) Line 23. This section must define the types of "testing" and "other actions" that may have a significant impact and identify several examples such as exploratory well drilling, importing and/or stockpiling soil not tested for pesticides or other contaminants etc.

(d) Line 25. After EA or EIS shall be prepared add before any decision making body can amend a county general, community, development or community sustainable plan.

Currently the EA/EIS comes **after** changes have been made to a county general plan/development or sustainable communities plan and the accompanying map. Thus, environmental impacts, if any, are not known before the use has been changed.

Example. Hawaii Memorial Cemetery (HMC) in Kaneohe went to the LUC seeking a state designation change from conservation to urban for cemetery expansion. A citizen fought the designation change at the LUC and won. Then HMC sought to change the Ko`olaupoko Sustainable Communities Plan, which excludes conservation land from being inside the urban boundary. After years of battle the City Council on 8/9/2017 put the cemetery inside the urban boundary with the requirement that an EIS be done. The community can go to the LUC and fight HMCs designation change but as we saw with the LUC Ho`opili decision once land is within the urban boundary the Oahu county and Oahu county decision-makers consider the land ready for development.

### §11-200-6 Applicant Actions administrative

(b)(2) Add a seventh new component category:

(G) Importing and depositing and/or stockpiling of dirt (dry or wet), construction debris, demolition debris, sludge, concrete, asphalt, rap (recycled asphalt), hazardous waste, petroleum or petroleum by-products that has not been tested for contaminants on land other than a Department of Health certified landfill.

(23) The ~~two~~ administrative categories are:

(A) Delete ~~two~~ administrative and replace with enactment because amendments to county general, development, and sustainable community plans are enacted through adoption of laws and legislative actions.

Line 10. Add *Sustainable Communities Plans* after development plans to be consistent.

Line 12. For clarity and easy understanding separate existing language in brackets into a two new sections

(A)(1) *Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may not be accepted.*

(A)(2) *General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted*

### §11-200-8 ~~Exempt Classes of Action~~ Exemption Notices

Line 20. Add if the property is not within the Shoreline Management Area (SMA) after eligible for exemption.

The new wording proactively requires greater evaluation of a shoreline development project and shoreline site to avoid building or redeveloping too close to the shoreline, which could put property and individuals at risk from sea level rise and could require hardening of the shoreline.

(4) Line 15 Define **Minor** to avoid confusion and misunderstanding.

(8) Line 24 Add or declared eligible before for placement on the national register... This language recognizes that some sites have been declared eligible for listing but have never been formally listed on the national or Hawaii Register of Historic Places.

~~(11 10)~~ Line 3 The word material change must be defined to ensure that a development does not exceed the existing footprint and impact environmentally sensitive land and that historic structures are not demolished without consideration of adaptive use.

~~(11)~~ Line 3 The inclusion of affordable housing should not be added to the exemption list. While developing affordable housing is a needed goal development of land that could be environmentally and culturally sensitive, which does exist within urban classified lands should not automatically be excluded from environmental review.

This exemption is not needed because under HRS 201H the States affordable housing corporation Hawaii Housing Finance and Development Corporation (HHFDC) has the sweeping power to acquire real property with public money, accept public land from DLNR for affordable housing without public notice, zone or rezone any part of a political subdivision and is exempt from **all statutes, ordinances, charter provisions and rules**. HHDFC carries out its mission to develop affordable housing without any public involvement.

In addition, HHFC can enter into affordable housing development agreements with the counties, State and private developers that meet the minimum requirement of health and safety making this proposed amendment unnecessary.

Under this very broad exemption it would be possible to develop Kuhio Park Terrace type affordable housing projects in areas not identified or planned for in county general, community development and sustainable communities plans or where adequate infrastructure does not exist nor is planned and budgeted.

What does the word existing refer too? Does a parcel have to be designated urban and zoned residential or mixed-use when these revised rules are passed or when an applicant applies to change the land use designation and/or zoning?

The exemption from environmental and cultural review when public funds are used should not be included. Such broad authority gives county and state entities complete freedom to purchase land anywhere even environmentally and culturally sensitive land with the purpose of developing the land without any public review, input or oversight.

### **§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration Finding of No Significant Impact~~ Determinations & Addenda to Draft Environmental Assessments**

(b) Line 19. After the word days add unless a written request for a time extension of up to 30 days has been receive, and approved by the accepting agency.

A mechanism needs to be provided for neighborhood boards and community organizations that wish to participate in the environmental review process but whose comments won't be accepted because they arrive after the 30-day deadline.

It is unfair for Oahu neighborhood boards, which are elected representatives of their community and meet once a month to be left out of the environmental review process just because a board meeting does not occur within the 30-day comment period.

(c) What are the consequences and/or recourse if the applicant or proposing agency does not respond in writing to comments received during the 30-day period?

### **§11-200-10 Contents of an Environmental Assessment**

(4) Line 10 add historical to the list of characteristics

### **§11-200-12 Significance Criteria**

(a) Line 4. Since some projects have several actions add of all actions within a project after effects. This inclusion helps ensure that impacts from all actions are considered and not just one or a primary action.

(b)(4) Line 19 Add a definition for substantial adverse effect

Line 20. Add cultural sites and features after welfare to reflect the importance of cultural sites and features and that care must be taken to preserve and protect ancient features and sites.

(9) Line 6. Delete substantial. Hawaii's rare, threatened and endangered species and their habitat are in such a precarious position and a slow decline that almost any adverse impact could push them over the top. Deleting substantial acknowledges that fact.

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

(b)(c) Line 8. The addition of With good cause is good but a definition of good cause plus examples of what constitutes good cause should be included. Without a definition or examples a person asking for an extension is at the mercy of the applicant and/or approving agencies decision without any explanation or recourse.

Example. Recently a 30-day extension to respond to an EA for a controversial project on the beach in Kailua was requested of both the applicant and accepting agency so that the Kailua Neighborhood Board, which did not meet within the 30-day response period could respond. Both the applicant and the accepting agency denied the request. Comments were sent in after the 30-days and neither the approving agency or applicant responded.

The accepting agency DPP said that they did not have the authority to grant an extension.

There needs to be an appeal process in the rules so that elected neighborhood boards can appeal the denial of an extension to the Environmental Council for a ruling.

### **§11-200-17 Content Requirements; Draft Environmental Impact Statement**

- (e) Line 23. While footnote 455 clarifies that an action can be either a program or project there is no definition of what a program is. Could creating a *plan* be considered a program?
- (e)(3) Line 30. Add aesthetic, flora and fauna, archeological, historical to the general description.
- (i) Line 10. Add bridges, walking and bike paths to the list of public facilities/structures.

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

- (24) Line 10 It is unclear why section 309 of the Clean Air Act is the only federal environmental projection act mentioned when there many other Federal laws such as National Historic Preservation Act of 1966, Clean Water Act, Archaeological Resources Protection Act, Endangered Species Act, Coastal Zone Management Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, Marine Protection and Sanctuaries Act, Historic Sites Act etc.

### **§11-200-26 Supplemental EIS General Provisions**

- (a) Line 8 The word *substantively* is too subjective. Delete ~~*substantively*~~ and replace with more quantifiable wording. After *not changed* add more than 25% *in size, scope, intensity, use, location or timing...*

**Glenn, Scott J.**

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**From:** Chang, Carty S  
**Sent:** Friday, October 20, 2017 3:10 PM  
**To:** Glenn, Scott J.  
**Cc:** Case, Suzanne D; Yim, Alyson K  
**Subject:** Comments to HAR 11-200 update

Aloha Scott

DLNR’s Engineering Division is providing the following comments to the proposed revisions to HAR 11-200

1. The terms “Program” and “Project” are used within §11-200-8. Page 22 Footnote mentions that “Chapter 343 does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such”. Even if Statute does not include definitions, couldn’t the Rules create a definition when the statute has none? We’ve had numerous discussion with our AG on the interpretation of these 2 terms, therefore a definition could definitely help.

2. State or county “Lands” defines the applicability of Chapter 343, however, there is no definition of “State Lands” in either Statute or Rules. HRS 171-1 includes a definition of “Lands”. Most times the applicability of this trigger is clear when used in the context of describing the use of the “surface” lands. However, it may be unclear whether or not use of subsurface minerals (i.e. geothermal) is considered a trigger and defined as “State Lands”. By the definition included in 171 and in consultation with our AGs, we have been considering the use of “subsurface” resources (geothermal) as a trigger. A definition may be helpful so any private landowner intending to mine their subsurface resources will have to comply with HRS Chapter 343.

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Carty Chang, P.E.  
Chief Engineer  
Department of Land and Natural Resources  
Engineering Division  
Phone: (808) 587-0230, Fax: (808) 587-0283  
Email: [carty.s.chang@hawaii.gov](mailto:carty.s.chang@hawaii.gov)  
<http://dlnreng.hawaii.gov>





925 Bethel Street  
5th Floor  
Honolulu, HI 96813  
808.523.5866  
www.g70.design

October 20, 2017  
Office of Environmental Quality Control  
via email: [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov)

Subject: Comments on Draft Rules Revision version 0.2

Dear Colleagues:

The OEQC and Environmental Council are seeking to changes HAR §11-200 Environmental Impact Statement rules to remove ambiguity, clarify language, and bring the rules into consistency with additions to guiding statute, HRS 343. The currently proposed changes are also a step towards acknowledging new technology that allows for simple electronic submittal and improved public accessibility to environmental disclosure documents. Additionally, the changes thus far in version 0.2 (v0.2 2017) of the initial rules changes begin to introduce common-sense management of public input and comment.

We applaud the OEQC effort to both clarify and improve the rules, and to engage planning professionals in early discussions of the rules changes that will ultimately be put forth. We are concerned that the current rules provide project opponents an opportunity to create a financial and time burden to the process through voluminous and non-substantive comments that detract from the very issues that warrant disclosure. Our comments, following, thus focus on the response to comment portion of the rules.

We wholeheartedly support the proposed consolidation of response to identical and very similar comments by allowing grouping of like comments [v0.2 2017 §11-200-9.1(c) and §11-200-17(p)]. Reproduction of the comments and responses, along with the names of the commenters to the EA or EIS, will characterize the number and sentiment of commenters and will ensure all comments are acknowledged. Streamlining responses to comments represents a common-sense change that reduces the burden on proposing agencies and applicants posed by voluminous and nearly identical comments. Grouping comments requires judgement and will no doubt be challenged at times, but overall the common-sense approach will allow timely response to potential “flooding” of comments intended to add expense and to slow projects.

We object to the proposed substitution of the word “written” for “substantive” [v0.2 2017 §11-200-15, formerly (d) now proposed as (e)]. The ability to address only substantive comments allows focus on the salient issues of the environmental analyses. Footnote #439 of v0.2 reveals the justification behind the recommended change “Removes the threshold of “substantive” and clarifies that all written comments received . . . must be responded to in writing.” The specific intent, therefore, is to require responses to irrelevant comments. Consistent with allowing an environmental practitioner’s judgement to group like comments to facilitate “grouped” responses, a practitioner’s ability to determine “non-substantive” comments should remain intact. Comments that are “substantive” warrant a thoughtful response; comments that are irrelevant and non-substantive add the burden of time and expense to the disclosure process without improving the analysis.

A definition of “substantive” can be added to the appropriate section e.g. from Merriam-Webster.com:

*Having substance: involving matters of major or practical importance; and*

*Real rather than apparent.*

Retaining this common-sense threshold of substantive comments will retain focus on the issues that warrant disclosure, and may prevent an undue burden placed on the project proponent.

To ensure non-substantive comments are not simply ignored, a requirement could be included to reproduce non-substantive comments in the Draft or Final documents marked as such. See our proposed addition to v0.2 2017 §11-200-15, formerly (d) now proposed as (e) and §11-200-17(p).

Finally, §11-200-22 Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements Public, needs to be brought into line with judgement allowed practitioners to handle comments and responses in a common-sense manner. The requirement of “point-by-point discussion” should be struck. Discussion of the validity, significance and relevance of comments, whether grouped or individually addressed, is relevant. However, to require “point-by-point discussion” is counter to the judgement allowed to respond to substantive comments in a manner that focuses on analysis of the project.

G70 appreciates the opportunity to comment on the proposed changes to HAR §11-200 and looks forward to ongoing dialogue as the Environmental Council and OEQC refine guidance for the public, project proponents, and practitioners.

Sincerely,

GROUP 70 INTERNATIONAL, INC., dba G70



Barrie Fox Morgan, AICP  
Senior Environmental Planner

# Hawai'i Construction Alliance

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P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

October 20, 2017

Joseph Shacat, Chair  
Scott Glenn, Vice Chair  
and Members  
State Environmental Council  
235 South Beretania Street, Suite 702  
Honolulu, Hawai'i 96813

**RE: Comments on Proposed Revisions to HAR Chap. 11-200, Env. Impact Statement Rules**

Dear Chair Shacat, Vice Chair Glenn, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We welcome the opportunity to comment on proposed revisions to Hawai'i Administrative Rules Chapter 11-200, working draft version 0.2. Our comments at this time are limited to the provisions pertaining to the creation of affordable housing, and we defer to our other industry partners for comment in other areas.

The Hawai'i Construction Alliance has been extremely concerned about the chronic deficiency of affordable housing across the state, which is negatively affecting families throughout the entire community, including our membership. Along with our partners in the banking, development, landowning, contracting, architecture, and engineering communities, we have identified measures which can be taken to improve the economics of constructing, developing, and financing affordable housing projects. One such measure is streamlining the review process at the state and county levels for these projects.

**Therefore, we welcome and strongly support the proposal on Page 36, Lines 3-7, which provides a new exemption for "new construction of affordable housing that only has use of state or county lands or funds as the sole requirement for compliance with chapter 343, HRS, and as proposed is consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards."**

**We note, however, that under this proposal, affordable housing projects situated in the "Waikiki Special District" which utilize state or county lands or funds would still be required to prepare an EA, even if the project is otherwise "consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards."**

Given the potential for renovation and redevelopment of the aging apartment stock in Waikīkī — particularly in the areas between Kūhiō Avenue and Ala Wai Boulevard — **we request that the State Environmental Council consider further amendments to allow affordable housing projects situated in the Waikīkī Special District to be treated like similar affordable projects in other parts of the island.**

Mahalo for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
[execdir@hawaiiconstructionalliance.org](mailto:execdir@hawaiiconstructionalliance.org)



October 20, 2017

Environmental Council  
c/o State Office of Environmental Quality Control  
235 S. Beretania Street, Suite 702  
Honolulu, HI 96813

Dear Environmental Council Chair Shacat, Vice Chair and Members:

We are writing to express serious concerns about changes that the Environmental Council (“Council”) is considering in the Working Draft of Proposed Revisions to Hawai’i Administrative Rules Title 11 Department of Health Chapter 200 Environmental Impact Statement Rules, Version 0.2, dated September 5, 2017 (“Proposed Revisions”). While some of the changes in the Proposed Revisions are beneficial and worthwhile, we hope the Council will make changes to address problematic provisions highlighted in these comments.

The Proposed Revisions purport to align Hawai’i Revised Statutes (“HRS”) Chapter 343 environmental review (“HEPA” or “Chapter 343”) practice with federal National Environmental Policy Act (“NEPA”) practice, yet **several of the proposed revisions will make HEPA practice far more onerous than current NEPA or HEPA practice, with no concomitant environmental benefit.** If implemented, these changes run the risk of stymying important economic growth and beneficial resource development, wasting human resources and creating incentives for pointless litigation of technical issues that serve no useful environmental benefit.

The changes we highlight in this document will fall especially hard on small businesses, including local organizations trying to revive agriculture and develop the renewable energy resources of the future. Specifically, the following six proposed revisions would be particularly onerous and wasteful, with no attendant benefit:

**1. Requiring responses to *all* comments, even immaterial or irrelevant ones.**<sup>1</sup>

Current HEPA guidance as well as federal EIS (NEPA) practice requires EISs to respond to all substantive comments received from the public (in this document, the term “EIS” includes Environmental Assessments, i.e., “EAs”). The revisions to the state HEPA rules would require responses to all comments, no matter how immaterial, irrelevant, or obscure. This change would require extensive and pointless paperwork to respond to potentially hundreds—or even more—irrelevant comments, and would expose EISs to legal challenge, delaying projects and increasing expenses with no environmental benefit.

In an important case on the federal NEPA, the United States Supreme Court explained the reason that requiring responses to all comments would be harmful. It held that an EIS should not be judged

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<sup>1</sup> See Proposed Revisions §§ 11-200-15(e), 17(p), and 18, pp. 54, 62, and 64.



insufficient for responding to comments that that are not “significant enough to step over a threshold requirement of materiality,” because EIS “proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure” comments and then filing suit based on those comments. For example, one party sued because an EIS did not respond to “over 7,000 pages of transcript” of a public meeting that was submitted as a comment; another sued when an EIS did not respond to a “comment” submitted in the form of a binder containing “over 800 pages” of documents.

Current Hawai‘i HEPA rules already authorize a lawsuit when an EIS fails to address “*substantive* comments received.” There is no reason to expand the ability to sue and require additional busywork, expense, and delays in tabulating and responding to questions that do not raise a substantive issue or are not even relevant.

## **2. Imposing an arbitrary presumptive requirement to begin a project within five years of the EIS.<sup>2</sup>**

Under the Proposed Revisions, an EIS would have a presumptive shelf life of five years between the Final EIS and the date of “Substantial Commencement.” This new term is defined as when financial commitments are “in place and scheduled” and design is essentially complete (plus the last approval is granted, if applicable). This five-year period is arbitrary, offered without any support or justification, and some of the terms are unclear. Furthermore, imposing an arbitrary five-year deadline could serve to artificially *accelerate* project implementation, which is not the goal of HEPA.

On the other hand, the existing language (which the proposed rule retains as a *second* requirement, when it should be the primary concern) already requires supplementation of an EIS when an action is modified or “new or different environmental impacts are anticipated.” Like the other changes highlighted in this document, this change is expected to result in more lawsuits and more expenses, with little to no environmental or other benefit. The current rule is not broken and therefore should not be fixed.

## **3. Increasing the Council’s time to respond to an appeal from 30 days to as much as 90 days.<sup>3</sup>**

When the Office of Environmental Quality Control makes a determination, the preparer of the EIS can appeal that decision to the Council. Under the Proposed Revisions, the Council no longer has to respond to an appeal within 30 days, but can take as long as 90 days, a drastic 300% increase in response time! This delay has no environmental benefit, and would operate to the particular detriment of small businesses who may not survive such pointless delays. The HEPA process is already long enough, and should not be further delayed for additional provisions that do not result in any environmental benefit.

## **4. Making a scoping meeting mandatory and requiring documentation of oral comments.<sup>4</sup>**

The Proposed Revisions require at least one EIS scoping meeting “in the area affected by the proposed action” as well as a “written summary” of oral comments made during the meeting and identifying

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<sup>2</sup> See Proposed Revisions § 11-200-27, p. 83.

<sup>3</sup> See Proposed Revisions § 11-200-24, p. 75.

<sup>4</sup> See Proposed Revisions §§ 11-200-15(a)(2), 15(f), 17(p), pp. 53, 55, and 62-63; § 11-200-2, p. 8.





those making the comments. In addition, a related change deletes language that would have stated, "suggestions made at the EIS public scoping meeting ... are considered to be advisory." However, public scoping meetings are necessarily advisory, and it is not always possible to capture all comments and identify all commenters, some of whom may not wish to be identified. These requirements add unnecessary complication, time, and expense to the already comprehensive HEPA process, and could further expose an EIS to additional legal challenges, again, without any environmental benefit.

**5. Requiring identification of whether each required permit or approval is "discretionary."**<sup>5</sup>


One of the Proposed Revisions would force applicants and agencies to identify all required "discretionary" approvals. However, whether an approval is "discretionary" is a complicated and frequently litigated legal question. Indeed, even agencies that issue permits have been overruled by courts as to whether *their own approvals* are discretionary. It is completely unreasonable to expect an applicant to know whether an approval is discretionary. As with the other burdensome changes, this requirement would expose an EIS to legal challenge while serving no environmental benefit.

**6. Removing previously proposed Programmatic EIS options.**<sup>6</sup>

Version 0.1 of the Proposed Revisions had proposed adding the ability to cover more than one similar project in a Programmatic EIS. The current Version 0.2 deletes this ability, replacing it with ambiguous "scope" and "level of detail" "style flexibility," that is ripe for legal challenge. Programmatic EISs are efficient and effective documents that are well established in NEPA practice and would be a welcome addition that could ease the burden on applicants and agencies of more modest means. The Council should therefore restore this ability.

Thank you for the opportunity to share our concerns with you.

Sincerely,



Amy Hennessey, APR  
Director of Communications

<sup>5</sup> See Proposed Revisions § 11-200-3, p. 16.

<sup>6</sup> See Proposed Revisions § 11-200-13, -19, and new section: "Environmental Assessment Style," pp. 51, 667-67, and 40-41.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Working Draft of Proposed Revisions to Hawai'i  
2 Administrative Rules Title 11 Department of Health  
3 Chapter 200 Environmental Impact Statement Rules  
4 **Version 0.2 September 5, 2017**

5  
6 Prepared with the assistance of the Office of Environmental Quality Control (OEQC).  
7

8 Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council  
9 (EC) members and the general public.

10

**11 Background**

12 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter  
13 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled  
14 in 1996. An amendment to add an exemption class for the acquisition of land for affordable  
15 housing was added in 2007, although it has not been compiled with the rest of the rules.  
16

17 On July 27, 2017, the EC Permitted Interaction Group submitted [Version 0.1](#) to the EC for its  
18 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional  
19 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline  
20 document and to serve as a foundation for consulting with affected agencies and the general  
21 public. The EC approval concluded the work of the Permitted Interaction Group.  
22

23 Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version  
24 0.3 in October 2017 that could potentially become the proposed draft for which it conducts  
25 formal public hearings to adopt into rules.  
26

27 **How to Read Version 0.2**  
28 Versions 0.1 and 0.2 use a "Ramseyer-lite" style of formatting to indicate proposed changes to  
29 HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules.  
30 Text with a strikethrough is language proposed for removal from the rules. A footnote  
31 accompanies the proposed change to provide context.  
32

33 In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes  
34 made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as  
35 well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version  
36 0.2 may have multiple footnotes following a given change. These footnotes are separated by a  
37 forward slash ("/") to help distinguish the different footnotes.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**1 Major Topics Addressed in Version 0.2**

2 Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In  
3 addition to the numerous revisions to modernize grammar and enhance readability  
4 (“housekeeping”), the following major topics are addressed in Version 0.2:

- 5 ● Clarifying definitions and aligning them with statutory definitions.
- 6 ● Incorporating cultural practices in accordance with Act 50 (2000).
- 7 ● Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e.,  
8 *The Environmental Notice*).
- 9 ● Aligning the “triggers” requiring environmental review for agencies and applicants with  
10 statutory language.
- 11 ● Clarifying the environmental review process as it applies to states of emergency and  
12 emergency actions.
- 13 ● Clarifying roles and responsibilities of proposing agencies and approving agencies in the  
14 environmental review process.
- 15 ● Revising the requirements and procedures for creating exemption lists and exempting  
16 actions from further environmental review.
- 17 ● Modernizing submittals, deadlines, comment and response, and distribution to recognize  
18 electronic communication.
- 19 ● Revising the comment and response requirements and procedures for environmental  
20 assessments (EAs) and environmental impact statements (EISs).
- 21 ● Clarifying style standards for EAs and EISs, including when an action is a program or a  
22 project.
- 23 ● Clarifying significance criteria thresholds for determining whether to issue an exemption  
24 notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- 25 ● Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- 26 ● Revising requirements for conducting scoping meetings following an EISPN.
- 27 ● Clarifying content requirements for Draft and Final EISs.
- 28 ● Revising procedures for appealing non-acceptance to the EC.
- 29 ● Revising procedures for joint federal-state environmental review.
- 30 ● Revising the requirements and procedures for determining when to do a Supplemental  
31 EIS, including aligning the requirements with statute and case law.
- 32 ● Adding a retroactivity section for actions that have already completed environmental  
33 review or are undergoing review at the time the rules would be enacted.

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Environmental Council

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

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Environmental Council

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

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Environmental Council

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

1 **HAR Chapter 11-200 Environmental Impact**  
2 **Statement Rules**

3 Subchapter 1 Purpose

4 **§11-200-1 Purpose**

5 Chapter 343, Hawaii Revised Statutes, (HRS)<sup>1</sup>, establishes a system of environmental review at  
6 the state and county levels ~~which~~ that<sup>2</sup> shall ensure that environmental concerns are given  
7 appropriate consideration in decision making along with economic and technical considerations.  
8 The purpose of this chapter is to provide agencies and persons with procedure<sup>002</sup> specifications  
9 of regarding the<sup>3</sup> contents of environmental assessments and environmental impact statements,  
10 and criteria and definitions of statewide application.

11  
12 Environmental assessments and environmental impact statements are meaningless without the  
13 conscientious<sup>005</sup> application of the environmental review process as a w<sup>004</sup> orking draft, and shall not be  
14 merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies  
15 and applicants shall ensure that EAs and EISs are prepared at the earliest op<sup>003</sup> portunity in the  
16 planning and decision-making process. This shall assure an early open forum for discussion of  
17 adverse effects and available alternatives, and that the decision-makers will be enlightened to  
18 any environmental consequences of the proposed action prior to decision making<sup>4, 5</sup>.

001

19  
20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-1, 343-6)

21  
22  
23

---

<sup>1</sup> Housekeeping.

<sup>2</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>3</sup> Increases clarity.

<sup>4</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

<sup>5</sup> Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

## #001

Posted by **Anonymous** on **09/08/2017** at **5:42pm**

Good and needed statement. Mahalo

Agree: 0, Disagree: 0

## #002

Posted by **Anonymous** on **10/18/2017** at **7:10pm**

Comment

delete comma. Add "and"

Agree: 0, Disagree: 0

## #003

Posted by **Anonymous** on **09/19/2017** at **8:51pm**

Suggest putting some standard on what "earliest opportunity" means. Otherwise it is an area of challenge no matter when the statements are prepared in the development process.

Agree: 0, Disagree: 0

## #004

Posted by **Anonymous** on **09/19/2017** at **8:49pm**

Question

What does "as a whole" mean?

Agree: 0, Disagree: 0

## #005

Posted by **Anonymous** on **10/07/2017** at **12:44am**

Comment

This language should be a bit more neutral. Terms like "self-serving" and "rationalization" reflect an obvious, and deeply concerning, bias on the part of the drafter. The HAR is not the place for advocacy. The purpose of Chapter 343, is to "ensure that environmental concerns are given APPROPRIATE consideration in decision making ALONG WITH economic and technical considerations." HRS 343-1 (emphasis added).

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 2 Definitions and Terminology

2 **§11-200-2 Definitions and Terminology**<sup>008</sup>

3 As used in this chapter:

4  
5 "Acceptance" means a formal determination of acceptability<sup>6</sup> that the document required to be  
6 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental  
7 impact statement (EIS),<sup>7</sup> ~~adequately describes identifiable environmental impacts, and~~  
8 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~  
9 by section 11-200-23.<sup>8</sup> Acceptance does not mean that the action is environmentally sound or  
10 unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
11 determination of acceptance is required prior to implementing or approving the action.  
12

13 "Accepting authority" means the final<sup>9</sup> official who<sup>10</sup> or agency that ~~determines the acceptability~~  
14 ~~of the EIS document~~ makes the determination that a final EIS<sup>009</sup> required to be filed pursuant to  
15 chapter 343, HRS, fulfills the definitions and requirements of an EIS<sup>11</sup>.  
16

17 "Action" means any program or project to be initiated by an agency or applicant.<sup>006</sup>

18  
19 "Addendum" means an attachment to a draft environmental assessment<sup>007</sup><sup>12</sup> or draft  
20 environmental impact statement<sup>010</sup><sup>13</sup>, prepared at the discretion of the proposing agency, of  
21 applicant, or<sup>14</sup> approving agency, and distinct from a supplemental EIS statement<sup>15</sup>, for the  
22 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,  
23 or clarifications to information already contained in the draft environmental assessment EA<sup>16</sup> or  
24 the draft environmental impact statement EIS already filed with the office.  
25

<sup>6</sup> Housekeeping. Removes redundant language.

<sup>7</sup> Housekeeping.

<sup>8</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.

<sup>9</sup> Removes "final" because it does not contribute additional meaning to the definition.

<sup>10</sup> Housekeeping.

<sup>11</sup> Clarifies that the role of the accepting authority ~~role is about~~ to determine the acceptability ~~about~~ of a final EIS.

<sup>12</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>13</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>14</sup> Clarifies that the approving agency does not always prepare the EA or EIS.

<sup>15</sup> Removes redundant language. An EIS is by definition a statement.

<sup>16</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

## #006

Posted by **Anonymous** on **09/29/2017** at **6:35pm**  
Comment

Add the following sentence to the definition: "The term "action" refers to the whole activity being approved, which may be subject to several discretionary approvals by a number of governmental agencies, as long as one of those approvals is within the categories identified in § 11-200-6. The term "action" does not mean each separate governmental approval."

Agree: 0, Disagree: 0

## #007

Posted by **Anonymous** on **10/07/2017** at **1:06am**

See Hawaii Administrative Rules Drafting Manual, 3d Ed., 2016, p. 84 which states: "Do Not use acronyms . . . in the text of rules."

Agree: 0, Disagree: 0

## #008

Posted by **Anonymous** on **10/02/2017** at **12:19am**  
Comment

Please include a definition for "Segmentation" and for clarity, should also address phasing.

Agree: 0, Disagree: 0

## #009

Posted by **robinknox** on **09/25/2017** at **1:16pm**

Agree: 0, Disagree: 0

## #010

Posted by **Anonymous** on **10/07/2017** at **1:06am**

See Hawaii Administrative Rules Drafting Manual, 3d Ed., 2016, p. 84 which states: "Do Not use acronyms . . . in the text of rules."

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Agency" means any department, office, board, or commission of the state or county  
 2 government ~~which~~ that is part of the executive branch of that government.  
 3  
 4 "Applicant" means any person ~~who~~ that<sup>17</sup>, pursuant to statute, ordinance, or rule, officially  
 5 requests approval from an agency for a proposed action.  
 6  
 7 "Approval" means a discretionary consent required from an agency prior to ~~actual~~<sup>18</sup>  
 8 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~  
 9 ~~recommendation from an agency for which judgment and free will may be exercised by the~~  
 10 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~  
 11 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~  
 12 ~~by law or rule without the use of judgment or discretion.~~<sup>19</sup>  
 13  
 14 "Approving agency" means an agency that issues an approval prior to ~~actual~~<sup>20</sup> implementation  
 15 of an ~~applicant~~<sup>015</sup><sup>21</sup> action, determines the need for an EA or EIS, and issues the exemption,  
 16 FONSI, or acceptance determination.<sup>22</sup> The approving agency may be ~~is also the~~<sup>23</sup> accepting  
 17 authority for an applicant final EIS.<sup>24</sup>  
 18  
 19 "Concurrence" means the discretionary ~~consent~~<sup>014</sup> of the council to an agency exemption list.<sup>25</sup>  
 20  
 21 "Council" or "EC" means the environmental council.  
 22  
 23 "Cumulative impact" means the impact on the environment ~~which~~ that results from the  
 24 incremental impact of the action when added to other past, present, and reasonably foreseeable  
 25 future actions regardless of what agency or person undertakes such other actions. Cumulative  
 26 impacts can result from individually minor but collectively significant actions taking place over a  
 27 period of time.  
 28  
 29

012

011

17 Stylistic change because a "person" as defined by the rules is not always a human.

18 Does not add meaning to sentence so removing the word.

19 Remove Removes "discretionary consent" from the definition and made makes it a standalone definition that mirrors the statute.

20 Does not add meaning to sentence so removing the word.

21 Approving agencies are only in the case of applicants.

22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

23 Clarifies that the approving authority is always the accepting authority for applicants.<sup>013</sup>

24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

25 Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is not an approval because it does not apply to a specific ~~project~~ action.

## #011

Posted by **Anonymous** on **09/08/2017** at **5:49pm**

Should this sentence be reordered: determines the need for..., issues the exemption... or issues an approval prior to implementation....?

Agree: 0, Disagree: 0

## #012

Posted by **Anonymous** on **09/08/2017** at **5:45pm**

Agree with deletion since I couldn't figure out what the text meant.

Agree: 0, Disagree: 0

## #013

Posted by **Anonymous** on **10/07/2017** at **1:52am**

Comment

In the case of an applicant action, such as a large development project where multiple approvals are required, while all accepting authorities may be approving agencies, it doesn't follow that all approving agencies are accepting authorities. There is a difference between the two definitions because an accepting authority is responsible for making the final determination on whether or not to accept the EIS, while the approving authority, which is responsible for approving some OTHER permit, license, lease, etc. has a duty to accept, provided that no other agency has already done so. The drafter seems to be blurring the lines.

Note that EIS's are subject to ACCEPTANCE, not APPROVAL.

Agree: 0, Disagree: 0

## #014

Posted by **Anonymous** on **10/07/2017** at **1:34am**

Question

Discretionary consent is a term of legal significance, is the goal here to open another avenue for litigation for Environmental Council concurrence with agency exemption lists? Concurrence has a plain language meaning, essentially agreement or by one definition "a coincidence of equal powers in law" is that not sufficient?

Agree: 0, Disagree: 0

## #015

Posted by **Anonymous** on **10/07/2017** at **1:15am**

Do agencies not require permits for any actions? The definition of applicant expressly (through the definition of person) excludes agencies.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Discretionary consent" means a consent, sanction, or recommendation from an agency for  
2 which judgment and free will may be exercised by the issuing agency, as distinguished from a  
3 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an  
4 agency upon a given set of facts, as prescribed by law or rule without the use of judgment or  
5 discretion.<sup>26</sup>  
6

7 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a  
8 proposing agency or an approving agency for public review and comment when that agency  
9 anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)<sup>27</sup> determination.  
10

11 "Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological  
12 effects (such as the effects on natural resources and on the components, structures, and  
13 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic  
14 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate  
15 or delayed<sup>28</sup>. Effects may also include those effects resulting from actions ~~which~~ that may have  
16 both beneficial and detrimental effects, even if on balance the agency believes that the effect  
17 will be beneficial.  
18

017

19 "EIS public scoping meeting"<sup>018</sup> means a meeting open to the public held by the proposing agency  
20 or applicant, or their representative, within the thirty-day public consultation period described in  
21 section 11-200-15, ~~inviting that invites~~ the participation of those agencies, citizen groups, and  
22 individuals reasonably believed to be potentially affected by the proposed action (including  
23 those who might not be in accord with the proposed action), to assist the preparing party in  
24 determining the range of actions, alternatives, impacts, and proposed mitigation measures to be  
25 considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.  
26 Suggestions made at the EIS public scoping meeting are considered to be advisory and not  
27 mandatory.<sup>29</sup>  
28

016

29 "Emergency action" means an action to prevent or mitigate loss or damage to life, health,  
30 property, or essential public services in response to a sudden unexpected occurrence  
31 demanding such immediate action. ~~a project or program that normally would be subject to~~  
32 chapter 343, HRS, but is not because of a state of emergency declared by the governor.<sup>30/31</sup>

<sup>26</sup> Definition removed from "approval" and made standalone. Mirrors HRS § section 343-2, HRS, language and expands on ministerial definition (which is existing language in HAR § section 11-200-2).

<sup>27</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>28</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

<sup>29</sup> Removes language unnecessary to the definition of "EIS public scoping meeting" that creates doubts about the value of participating in the the EIS scoping meeting process.

<sup>30</sup> Redefines an emergency action to be an action undertaken during a particular emergency proclamation issued by the governor.

<sup>31</sup> Re-inserting language that was deleted in v0.1 and moving distinction between actions taken in response to an emergency without a governor's proclamation of a state of emergency and actions taken during a governor proclaimed state of emergency in section 11-200-5, Agency Actions.

## #016

Posted by **Anonymous** on **09/08/2017** at **5:54pm**

Very important deletion.

Agree: 0, Disagree: 0

## #017

Posted by **Anonymous** on **09/08/2017** at **5:53pm**

Good addition.

Agree: 0, Disagree: 0

## #018

Posted by **Anonymous** on **09/20/2017** at **3:14pm**

Comment

Specify general location of meeting to be held. e.g. in the community where project will be completed.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,  
2 and social conditions that exist within the area affected by a proposed action, including land,  
3 human and animal communities, **health**,<sup>32</sup> air, water, minerals, flora, fauna, ambient noise, and  
4 objects of historic, cultural,<sup>33</sup> or aesthetic significance.

5  
6 "Environmental assessment" or "EA"<sup>34</sup> means a written evaluation ~~to determine whether an~~  
7 ~~action may have a significant environmental effect. that serves to provide sufficient evidence~~  
8 ~~and analysis to determine whether an action may have a significant environmental effect.~~<sup>35</sup> ~~It~~  
9 ~~together Together~~<sup>36</sup> with a FONSI, **an EA**<sup>37</sup> satisfies chapter 343, HRS, when no EIS is  
10 necessary,<sup>38</sup> ~~and facilitates preparation of an EIS when no EIS is determined to be~~<sup>39</sup> ~~necessary~~  
11 ~~and the Chapter 343, HRS, may be satisfied without an EA when,~~ based on an agency's  
12 judgment and experience, the agency concludes that the proposed action may have a  
13 significant effect on the environment **and therefore proceeds directly to or authorizes an**  
14 **applicant to proceed directly to the preparation of an EIS.**<sup>40</sup>

15  
16 "~~Environmental impact~~" means ~~an effect of any kind, whether immediate or delayed, on any~~  
17 ~~component of the environment.~~<sup>41</sup>

18  
19 "Environmental impact statement,"<sup>42</sup> "statement,"<sup>43</sup> or "EIS" means an informational document  
20 prepared in compliance with chapter 343, HRS, ~~and this chapter and which fully complies with~~  
21 ~~subchapter 7 of this chapter~~<sup>42</sup>. The initial statement EIS<sup>43</sup> filed for public review shall be referred  
22 to as the draft ~~environmental impact statement EIS~~ and shall be distinguished from the final  
23 ~~environmental impact statement EIS~~, which is the document that has incorporated the public's  
24 comments and the responses to those comments. The final ~~environmental impact statement~~  
25 EIS is the document that shall be evaluated for acceptability by the ~~respective~~<sup>44</sup> accepting  
26 authority.

27

<sup>32</sup> Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".

<sup>33</sup> Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).

<sup>34</sup> Adds common abbreviation for use throughout the rules.

<sup>35</sup> Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.

<sup>36</sup> Stylistic change to increase readability.

<sup>37</sup> Stylistic change to increase readability.

<sup>38</sup> Stylistic change to increase readability.

<sup>39</sup> Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).

<sup>40</sup> Clarifies that an EA is not always required prior to beginning preparation of an EIS.

<sup>41</sup> Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.

<sup>42</sup> Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

<sup>43</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>44</sup> Unnecessary language so recommend removing.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "EIS preparation notice,"<sup>45</sup> or "EISPN"<sup>46</sup>, or "preparation notice" means a determination based  
2 on an environmental assessment that the subject that an<sup>47</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement EIS, based on either an EA or an agency's judgment and experience that the  
5 proposed action may have a significant effect on the environment and therefore authorizes the  
6 preparation of an EIS without first requiring an EA.<sup>48/49/50/51</sup>

7  
8 "~~Exempt classes of action~~" means ~~exceptions from the requirements of chapter 343, HRS, to~~  
9 ~~prepare environmental assessments, for a class of actions, based on a determination by the~~  
10 ~~proposing agency or approving agency that the class of actions will probably have a minimal or~~  
11 ~~no significant effect on the environment.~~<sup>52</sup>

12  
13 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a  
14 public government<sup>53</sup> action, or the agency with the power of approval, in the case of a private  
15 action, when it has determined that the proposed project is an exempt or emergency project  
16 action<sup>54</sup>.

17  
18 "Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by  
19 a proposing agency or an approving agency following the public review and comment period for  
20 the draft ~~environmental assessment~~ EA and in support of either a FONSI or a ~~preparation notice~~  
21 an EISPN<sup>55</sup>, ~~determination; or the environmental assessment submitted by a proposing agency~~  
22 ~~or an approving agency subject to a public consultation period when such an agency clearly~~  
23 ~~determines at the outset that the proposed action may have a significant effect and hence will~~  
24 ~~require the preparation of a statement.~~<sup>56</sup>

45 Housekeeping.

46 Adds common abbreviation for use throughout the rules.

47 Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

48 Adds the direct-to-EIS pathway to the definition of an EISPN.

49 Removes unnecessary language describing the process of making an EISPN determination while<sup>019</sup>  
preserving the meaning of the definition.

50 Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the  
accepting agency based on the agency's judgment and experience chapter 343-5(e), HRS.

51 Moved under "E" because EISPN is used more frequently than "preparation notice".

52 Removes the definition because the concept of "classes of actions" is removed in section 11-200-8.

53 Global change that clarifies that "public" refers to "government" actions. "Public" is used throughout the  
regulations to refer to the general citizenry.

54 Aligns with defined term "emergency action".

55 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

56 Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency's judgment and  
experience, the agency concludes that the proposed action may have a significant effect on the  
environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may  
authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and  
applicants, the EIS preparation begins with an EISPN.

## #019

Posted by **Anonymous** on **10/09/2017** at **5:09pm**

Always happy to see the removal of unnecessary language! Keep it up!

Agree: 0, Disagree: 0

## #020

Posted by **Anonymous** on **09/20/2017** at **2:10pm**

Question

(continued)...it will be helpful for the various agencies?

Agree: 0, Disagree: 0

## #021

Posted by **Anonymous** on **09/20/2017** at **3:30pm**

Comment

..it will be very helpful

Agree: 0, Disagree: 0

## #022

Posted by **Anonymous** on **09/20/2017** at **2:04pm**

Question

Would it be possible to formalize a sample exemption notice so this can be used by agencies and also if submitted to OEQC for publication in the bulletin it will?

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an  
2 EA that an action not otherwise exempt ~~does will~~<sup>57</sup> not have ~~the potential for~~<sup>58</sup> a significant  
3 effect on the environment and therefore does not require the preparation of an EIS. A FONSI is  
4 required prior to implementing or approving the action.<sup>59</sup>

5  
6 "Impacts" means the same as "effects".<sup>60</sup>

028

027

024

7  
8 "Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

9  
10 "National Environmental Policy Act" or "NEPA"<sup>61</sup> means the National Environmental Policy Act  
11 of 1969, Public Law 91-190, 42 U.S.C. § sections 4321-4347, as amended.

12  
13 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
14 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
15 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
16 ~~A negative declaration is required prior to implementing or approving the action.~~<sup>62</sup>

17  
18 "Office" means the office of environmental quality control.

026

19  
20 "Periodic bulletin" means the document required by section 343-3, HRS, and published by the  
21 office.

22  
23 "Person" includes any individual, partnership, firm, association, trust, estate, private corporation,  
24 or other legal entity other than an agency.

25  
26 "Power generating facility" means:

- 27 1. A new, fossil-fuel<sup>025</sup>electricity-generating facility, where the electrical output  
28 rating of the new equipment exceeds 5.0<sup>023</sup>gawatts; or
- 29 2. An expansion in generating capacity of an existing, fossil-fueled, electricity-  
30 generating facility, where the incremental electrical output rating of the new  
31 equipment exceeds 5.0 megawatts.<sup>63</sup>

32  
33  
34  
35  

---

<sup>57</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>58</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>59</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>60</sup> Adds a reference for anyone looking up the word "impacts" to direct them to the word "effects".

<sup>61</sup> Adds common abbreviation for use throughout the rules.

<sup>62</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>63</sup> Adds definition from HRS § 343-2.

## #023

Posted by **Anonymous** on **10/18/2017** at **7:27pm**

Question

What is the basis/rationale for excluding facilities that generate less than 5 MW in this definition?

Agree: 0, Disagree: 0

## #024

Posted by **Anonymous** on **09/20/2017** at **3:08pm**

Comment

Its hard to tell when reading the document the words that are not capitalized have a definition (e.g. office)

Agree: 0, Disagree: 0

## #025

Posted by **Anonymous** on **10/18/2017** at **7:25pm**

Question

Why is this definition limited to fossil-fuel power generation?

Agree: 0, Disagree: 0

## #026

Posted by **Anonymous** on **09/20/2017** at **3:05pm**

Comment

e.g. "Periodic Bulletin" means the document required by section 343-3, HRS, and published by the Office.

Agree: 0, Disagree: 0

## #027

Posted by **Anonymous** on **09/20/2017** at **3:06pm**

Comment

See example "Periodic Bulletin"

Agree: 0, Disagree: 0

## #028

Posted by **Anonymous** on **09/20/2017** at **3:02pm**

Comment

Any item in the document that contains a definition should have capital first letters. (e.g. Issue Date, Periodic Bulletin) This way when reading the document the reader knows that this paired words contain a definition and have been set. In the document the words should also match this (e.g. Office should be capitalized), which will make reading and connecting the definition to the word a lot easier.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Preparation notice," or "EIS preparation notice,"<sup>64</sup> or "EISPN"<sup>65</sup> means a determination based  
2 on an environmental assessment that the subject ~~that an~~<sup>66</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement EIS, based on either an EA or an agency's judgment and experience that the  
5 proposed action may have a significant effect on the environment **and therefore authorizes the**  
6 **preparation of an EIS without first requiring an EA.**<sup>67</sup>

7  
8 "Primary impact," or "primary effect," or "direct impact," or "direct effect" means effects which  
9 that are caused by the action and occur at the same time and place.

10  
11 **A "programmatically EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a**  
12 **number of separate actions in a given geographic area which, if considered singly, may have**  
13 **minor impacts, but if considered together may have significant impacts; (2) a sequence of**  
14 **actions contemplated by a single agency or applicant; (3) separate actions having generic or**  
15 **common impacts; (4) an entire program or plan having wide application or restricting the range**  
16 **of future alternative policies or projects, including new or significant changes to existing land use**  
17 **plans, development plans, zoning regulations, or agency comprehensive resource management**  
18 **plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)**  
19 **implementation of a single project or program over a large geographic area.**<sup>68/69</sup>

20  
21 "Proposing agency" means any state or county agency that proposes an action under chapter  
22 343, HRS.<sup>70</sup>

23  
24 "Secondary impact," or "secondary effect," or "indirect impact," or "indirect effect" means **an**  
25 **effects effect** which that is are caused by the action and are later in time or farther removed in  
26 distance, but **are is** still reasonably foreseeable.<sup>71</sup> **Indirect An indirect effects effect** may include  
27 **a growth-inducing effects effect**<sup>72</sup> and other effects related to induced changes in the pattern of

<sup>64</sup> Housekeeping.

<sup>65</sup> Adds common abbreviation for use throughout the rules.

<sup>66</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>67</sup> **Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".**

<sup>68</sup> **Adds a definition to go along with new sections on how to do environmental review for an action this that is a "program". Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.**

<sup>69</sup> **This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatically EIS", but rather provides more specificity in the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.**

<sup>70</sup> Added definition because the term is used frequently throughout the rules.

<sup>71</sup> **Grammar change to singular to mirror the definition of effect or impact as a singular object.**

<sup>72</sup> **Stylistic change reflect changes made to previous sentence.**

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 land use, population density or growth rate, and related effects on air, and water,<sup>73</sup> and other  
 2 natural systems, including ecosystems.  
 3  
 4 "035ifificant effect" or "significant impact" means the sum of effects on the quality of the  
 5 environment, including actions that irrevocably commit a natural resource, curtail the range of  
 6 beneficial uses of the environment, are contrary to the state's State's<sup>74</sup> environmental policies or  
 7 long-term environmen032goals and guidelines as established by law, or<sup>75</sup> adversely affect the  
 8 economic welfare,<sup>76</sup> or social welfare, or<sup>77</sup> cultural practices of the community and State,<sup>78</sup> or  
 9 are otherwise set forth in section 11-200-12 of this chapter<sup>79</sup>.  
 10  
 11 "Substantial commencement" means that a an applicant<sup>80</sup> project or program action<sup>81</sup> has  
 12 reached the stage where its last approval<sup>82</sup> has been granted and has advanced to the point  
 13 where financial commitments are in place and scheduled and design is essentially complete, or,  
 14 for government programs an agency action<sup>83</sup> for which an approval is not required, the project  
 15 or program program or project<sup>84</sup> has advanced to the point where financial commitments are in  
 16 place and scheduled and design is essentially complete.<sup>85</sup> 031 030 029  
 17  
 18 033  
 19 034  
 20

<sup>73</sup> Housekeeping.

<sup>74</sup> Housekeeping.

<sup>75</sup> Housekeeping.

<sup>76</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>77</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>78</sup> Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added "cultural practices" to the list of adverse effects that could constitute "significance". "Of the community and State" is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of "significant effect".

<sup>79</sup> Housekeeping.

<sup>80</sup> Clarifies the distinction between applicant actions and government actions.

<sup>81</sup> Increases readability.

<sup>82</sup> As defined in section 343-2, HRS, an approval is a discretionary consent.

<sup>83</sup> Removes introduction of new term "government", and replaces with synonym "agency". Further clarifies that this definition applies to both programs and projects.

<sup>84</sup> Global edit changing word order of "project or program" to "program or project" to align with the definition of "action" in section 343-2, HRS.

<sup>85</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law. In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than \$20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).

## #029

Posted by **Anonymous** on **10/02/2017** at **12:24am**

Comment

The phrase "financial commitments" is unclear. Does it mean a certain dollar amount threshold? Could it be a loan?

And, is there a timeframe for requiring a supplemental?

Agree: 0, Disagree: 0

## #030

Posted by **Anonymous** on **09/29/2017** at **6:36pm**

Comment

Delete "its last approval has been granted and" and replace with "at least one agency approval has been granted and the project" and delete "and scheduled" which is confusing.

Agree: 0, Disagree: 0

## #031

Posted by **Anonymous** on **10/09/2017** at **6:30pm**

Question

For DLNR approved projects which require notice of project commencement on the ground, is the same requirement or can "substantial commencement" differ from DLNR notification.

Agree: 0, Disagree: 0

## #032

Posted by **DLNR - State Parks** on **10/18/2017** at **10:43pm**

Comment

To clarify: if the applicant is required to obtain numerous permit and reviews approvals such as County building, SMA and other approvals that have different timeframes in its review and approvals, is substantial commencement referring to last of the permits needed that may be ministerial vs a SMA permit that may go through public hearing and other processes?

Agree: 0, Disagree: 0

## #033

Posted by **Russell Kumabe** on **10/18/2017** at **10:41pm**

Comment

To clarify: if the applicant is required to obtain numerous permit and reviews approvals such as County building, SMA and other approvals that have different timeframes in its review and approvals, is substantial commencement referring to last of the permits needed that may be ministerial vs a SMA permit that may go through public hearing and other processes?

Agree: 0, Disagree: 0

## #034

Posted by **G70** on **10/20/2017** at **10:23pm**

"Substantive comment" is one involving issues of practical importance and related to the written document.

(needed for 11-200-15 and 11-200-17)

Agree: 0, Disagree: 0

**#035**

Posted by **Anonymous** on **10/09/2017** at **5:08pm**

Comment

Re-work sentence structure

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 "Supplemental statement EIS" means an additional environmental impact statement updated  
2 EIS<sup>86</sup> prepared for an action for which a ~~statement~~ an EIS was previously accepted, but which  
3 has yet to progress to substantial commencement and since acceptance the action,  
4 c039 instances, or anticipated impacts have<sup>87</sup> changed substantively in size, scope, intensity,  
5 use, location, or timing, among other 038gs. 037 036  
6  
7 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.<sup>88</sup>  
8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)  
10  
11

<sup>86</sup> Housekeeping.

<sup>87</sup> Incorporates substantial commencement into the definition and emphasizes that changes can apply to the proposed action, the environment, or knowledge (ties to supplemental sections).

<sup>88</sup> Adds definition from HRS § section 343-2, HRS.

## #036

Posted by **Anonymous** on **10/18/2017** at **7:33pm**

"Among other things" is too vague to be interpretable. What "other things?" Perhaps add additional examples?

Agree: 0, Disagree: 0

## #037

Posted by **Anonymous** on **09/29/2017** at **6:37pm**

Comment

Agree with proposed revisions. For clarity, consider inserting the word "action" in the following phrase: ". . . but which action has yet to progress . . ."

Agree: 0, Disagree: 0

## #038

Posted by **Anonymous** on **10/09/2017** at **5:15pm**

Question

What constitutes "other things" here?

Agree: 0, Disagree: 0

## #039

Posted by **Anonymous** on **10/02/2017** at **12:28am**

Question

Pg. 14 - Does word "circumstances" include population changes, infrastructure, traffic congestion and the like?

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 3 Periodic Bulletin

2 **§11-200-3 Periodic Bulletin**

3 (a) The office shall inform the public through the publication of a periodic bulletin of the  
4 following:

- 5 (1) Notices filed by agencies<sup>89</sup> of the availability of ~~environmental assessments~~ EAs
- 6 and appropriate addendum documents for review and comments;
- 7 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or
- 8 not required;
- 9 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and
- 10 appropriate addendum documents for review and comments;
- 11 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
- 12 (5) Other notices required by the rules of the council.

13  
14 ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin~~  
15 ~~shall also be sent to the state library system and other depositories or clearinghouses.<sup>90</sup>~~

16  
17 (c <sup>b</sup><sup>91</sup>) The bulletin shall be issued on the eighth and twenty-third days of each month. All  
18 agencies and applicants submitting exemption notices<sup>92</sup>, draft ~~environmental~~  
19 ~~assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNS<sup>93</sup>,  
20 ~~environmental impact statements~~ EISs, acceptance or non-acceptance determinations,  
21 addenda, supplemental ~~statements~~ EISs, supplemental ~~preparation notices~~ EISPNS,  
22 revised documents, withdrawals, and other notices required to be published in the  
23 bulletin shall submit such documents or notices to the office before the close 040business  
24 ~~eight~~ four<sup>94</sup> ~~working~~ business<sup>95</sup> days prior to the issue date. In case the deadline falls on  
25 a state holiday or ~~nonworking~~ non-business<sup>96</sup> day, the deadline shall be the next ~~working~~  
26 business<sup>97</sup> day.

89 Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

90 This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

91 Housekeeping. Renumbers paragraphs.

92 Aligns with section 11-200-8.

93 Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

94 OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

95 Housekeeping. For computing time see section 1-29, HRS.

96 Housekeeping.

97 Housekeeping.

## #040

Posted by **Naaupo** on **09/15/2017** at **6:58pm**

### Question

Will the proposed revisions allow for neighbor island submittals postmarked before the close of business on the due date to be considered for publication? I believe that the office allowed this past practice at one time. Note the use of "postmarked" throughout this draft of the rules with respect to business days and/or calendar days?

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (d c) All submittals to the office for publication in the bulletin shall be accompanied by a  
 2 completed informational form ~~which~~ that provides whatever information the office needs  
 3 to properly notify the public. The information requested ~~m~~<sup>041</sup> include the following: the  
 4 title of the action; the islands affected by the proposed action; tax map key numbers;  
 5 street addresses; nearest geographical landmarks; latitudinal and longitudinal  
 6 coordinates or other geographic data<sup>98</sup>; applic<sup>042</sup> permits, including discretionary  
 7 approvals requiring preparation of the document under chapter 343, HRS;<sup>99</sup> whether the  
 8 proposed action is an agency or an applicant action; a citation of the applicable federal  
 9 or state statutes requiring preparation of the document; the type of document prepared;  
 10 the names, addresses and contact persons as applicable of the accepting authority, the  
 11 proposing agency, the approving agency, the applicant, and the consultant; and a brief  
 12 narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey  
 13 the full impact of the proposed action to the public.

14  
 15 (e d) The office may provide recommendations to the agency or applicant<sup>100</sup> responsible for  
 16 the ~~environmental assessment~~ EA or EIS regarding any applicable administrative  
 17 content requirements set forth in this chapter.

18  
 19 (f e) The office may, on a space available basis, publish other notices not specifically related  
 20 to chapter 343, HRS.

21  
 22 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,  
 23 343-3, 343-6)

24  
 25  
 26

---

<sup>98</sup> Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

<sup>99</sup> Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

<sup>100</sup> Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.

## #041

Posted by **Anonymous** on **10/02/2017** at **12:30am**

Comment

page 16 (c) - replace "may" with "shall"

Agree: 0, Disagree: 0

## #042

Posted by **Anonymous** on **10/11/2017** at **12:29am**

Comment

Please clarify that this is only for the approvals that the agency is publishing for an not ALL potentially applicable to the project as the EA/EIS process may be triggered by one permit before all potentially relevant approvals are ascertained.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 4 Responsibilities

2 **§11-200-4 Identification of Approving Agency and<sup>101</sup>**  
3 **Accepting Authority**

4 (a) Whenever an agency proposes an action, the ~~final~~<sup>102</sup> authority to accept ~~a statement an~~  
5 EIS shall rest with:

043

6 (1) The governor, or ~~an~~ the governor's<sup>103</sup> authorized representative, whenever an  
7 action proposes the use of state lands or ~~the use of~~<sup>104</sup> state funds or,<sup>105</sup>  
8 whenever a state agency proposes an action ~~within~~ under<sup>106</sup> section 11-200-6(b);  
9 or

10 (2) The mayor, or ~~an~~ the mayor's<sup>107</sup> authorized representative, of the respective  
11 county whenever an action proposes only the use of county lands or county  
12 funds.

13 In the event that an action involves state and county lands, **state and county**<sup>108</sup> funds, or  
14 both **state and county**<sup>109</sup> lands and funds, the governor or the governor's authorized  
15 representative shall have authority to accept the EIS.<sup>110</sup>

17 (b) Whenever an applicant proposes an action, the authority for requiring an EA or<sup>111</sup>  
18 statements EIS, and for making a determination regarding any required EA, and<sup>112</sup>  
19 accepting any required statements EIS that have been prepared shall rest with the  
20 approving<sup>113</sup> agency ~~initially receiving and agreeing that initially received and agreed~~<sup>114</sup>  
21 to process the request for an approval. With respect to EISs, the approving agency is  
22 also called the accepting authority.<sup>115</sup>

<sup>101</sup> Expand the content of this section to also identify the agency with responsibility in cases of EAs.

<sup>102</sup> Removes the word "final" because it does not add to the meaning of the sentence **anymore**.

<sup>103</sup> Housekeeping.

<sup>104</sup> Housekeeping.

<sup>105</sup> Housekeeping.

<sup>106</sup> Housekeeping.

<sup>107</sup> Housekeeping.

<sup>108</sup> **Makes clear that "state and county" funds are meant.**

<sup>109</sup> **Makes clear that "state and county" lands and funds are meant.**

<sup>110</sup> Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.

<sup>111</sup> Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

<sup>112</sup> Adds EAs to the identification of which agency has responsibility. Language is phrased **d** so that the agency can make a FONSI or EISPN determination.

<sup>113</sup> Housekeeping. Clarifies **that** the **agency** is called the **approving agency**.

<sup>114</sup> Housekeeping.

<sup>115</sup> Clarifies that **the** approving agency is the accepting authority for applicants.

**#043**

Posted by **Anonymous** on **10/19/2017** at **6:13pm**

Question

Should this list both an EA or an EIS?

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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(c)<sup>116</sup> In the event that ~~there is~~<sup>117</sup> more than one agency ~~that is proposing the action or~~  
~~in the case of applicants,~~<sup>118</sup> ~~more than one agency~~<sup>119</sup> has jurisdiction over the action,  
and these agencies are unable to agree as to which agency has the responsibility for  
complying with ~~section 343-5(e)~~ chapter 343<sup>120</sup>, HRS, the office, after consultation with  
the agencies involved, shall determine which agency is responsible for compliance<sup>121</sup>. In  
making the determination, the office shall ~~take into consideration, including, but not~~  
~~limited to, the following factors~~ consider<sup>122</sup>:

- (1) The agency with the greatest responsibility for supervising or approving the action as a whole;
- (2) The agency that can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
- (3) The agency that has special expertise or greatest<sup>123</sup> access to information relevant to the action's implementation and impacts<sup>124</sup>; and
- (4) The extent of participation of each agency in the action.

(d) The office shall not serve as the accepting authority for any proposed agency or applicant action.<sup>125</sup>

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

<sup>116</sup> Creates new paragraph to clarify that OEQC can make this determination for applicants and for agencies when they are unable to agree on who is the proposing agency or approving agency. The paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when multiple agencies want the responsibility.

<sup>117</sup> Stylistic change to increase readability.

<sup>118</sup> Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

<sup>119</sup> Stylistic change to increase readability.

<sup>120</sup> Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

<sup>121</sup> Stylistic change to increase readability.

<sup>122</sup> Housekeeping.

<sup>123</sup> Helps to distinguish among agencies - all agencies have access to information.

<sup>124</sup> Clarifies what kind of information is meant.

<sup>125</sup> Clarifies that OEQC may not serve as the accepting authority, as per chapter 343, HRS.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 5 Applicability

2 **§11-200-5 Agency Actions**

- 3 (a) For all **proposed**<sup>126</sup> **agency**<sup>127</sup> actions ~~which that~~ are not exempt,<sup>128</sup> as defined in section  
4 11-200-8, the proposing<sup>129</sup> agency shall assess at the earliest practicable time the  
5 significance of potential impacts of ~~its actions~~ the proposed agency's<sup>130</sup> action<sup>131</sup>,  
6 including the overall, cumulative impact in light of related past, present, and reasonably  
7 foreseeable<sup>132</sup> actions in the region area affected<sup>133</sup> ~~and further actions contemplated.~~<sup>134</sup>  
8
- 9 (b) The applicability of chapter 343, HRS, to specific agency **proposed** actions is  
10 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~  
11 ~~when an agency proposes to implement an action to use state or county lands or funds,~~  
12 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~<sup>135</sup>  
13
- 14 (c) Use of state or county funds shall include any form of funding assistance flowing from  
15 the State or a<sup>136</sup> county, and use of state or county lands includes any use (title, lease,  
16 permit, easement, licenses, etc.) or entitlement to those lands.  
17
- 18 (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or  
19 planning study for possible future programs or projects ~~which that~~ the agency has not  
20 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a  
21 proposal, it shall consider environmental factors and available alternatives and disclose  
22 these in any future assessment EA or subsequent statement EIS. ~~If, however,~~<sup>137</sup> the  
23 planning and feasibility studies involve testing or other actions ~~which that~~ may have a  
24 significant impact on the environment, ~~then~~<sup>138</sup> an environmental assessment EA or  
25 EIS<sup>139</sup> shall be prepared.

044

<sup>126</sup> Global change removing "proposed" before or modifying "action" unless "proposed" is necessary within the context of the sentence or provision to provide clarity.

<sup>127</sup> Housekeeping.

<sup>128</sup> Housekeeping.

<sup>129</sup> Housekeeping.

<sup>130</sup> Housekeeping. Removed words to eliminate redundancy.

<sup>131</sup> Housekeeping.

<sup>132</sup> Clarifies what is considered as part of a cumulative look impact analysis. Language is drawn from NEPA, 40 CFR 1508.7.

<sup>133</sup> Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

<sup>134</sup> Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

<sup>135</sup> Housekeeping. Redundant language.

<sup>136</sup> Housekeeping.

<sup>137</sup> Housekeeping.

<sup>138</sup> Housekeeping.

<sup>139</sup> Acknowledges direct-to-EIS pathway.



## #044

Posted by **donna wong** on **10/11/2017** at **5:51pm**

Examples of "testing" and "other actions" that will and will not be exempt should be included so that the reader and the applicant can understand what actions are acceptable and which actions are not exempt. what.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1  
2 (e) Any amendment to existing county general plans, however denominated, which may  
3 include ~~but not be limited to~~ development plans,<sup>140</sup> or community plans, where the  
4 amendment would result in designations other than agriculture, conservation, or  
5 preservation,<sup>141</sup> requires an environmental assessment EA or EIS<sup>142</sup>. (Actions by a  
6 county initiating a comprehensive review toward effectuating either a general plan or  
7 amendment thereof may be excepted. General plan amendments requested by a private  
8 owner or developer outside of the comprehensive review process are not excepted.)

9  
10 (f) In the event that the governor declares a state of emergency pursuant to chapter  
11 127A, HRS,<sup>143</sup> the governor has authority to suspend laws, including chapter 343, HRS.  
12 In such an event, the proposing agency shall file an exemption notice in its records that  
13 the emergency action was undertaken pursuant to a specific emergency proclamation.<sup>144</sup>  
14 If the emergency action ~~is~~ not substantially commenced within sixty <sup>046</sup> days of the  
15 emergency proclamation, <sup>054</sup> the action will be subject to chapter 343, HRS.<sup>145</sup>

16  
17 (g) In the event of a sudden unexpected emergency causing or likely to cause loss  
18 or damage to life, health, <sup>052</sup> ~~or~~ <sup>050</sup> essential public service, but for which a declaration  
19 of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency  
20 may undertake an emergency action without conducting environmental review under  
21 chapter 343. An emergency action undertaken without environmental review may still be  
22 subject to the public's <sup>053</sup> ~~right~~ to a judicial proceeding on the lack of an assessment,  
23 pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days  
24 of the agency's decision to carry out the action or from the date the <sup>047</sup> public becomes  
25 aware of the action, whichever is later.<sup>146</sup> <sup>048</sup>

26  
27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(b),  
28 343-6)

<sup>140</sup> Housekeeping.

<sup>141</sup> Housekeeping.

<sup>142</sup> Direct-to-EIS is also an option.

<sup>143</sup> States the name of the statute for emergency proclamations.

<sup>144</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>145</sup> Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count.

<sup>146</sup> Provides an avenue for agencies to undertake emergency actions (e.g., cutting a firebreak) absent a governor declared state of emergency and provides safeguards to avoid abuse, including clearly defined circumstances in which the emergency action may be initiated and the requirement to produce an exemption notice after the fact. An agency decision to undertake an emergency action without environmental review may be subject to judicial review.

## #045

Posted by **Anonymous** on **10/19/2017** at **6:26pm**

Question

Is there a similar provision for applicant actions that are conducted in response to an emergency situation?

Agree: 0, Disagree: 0

## #046

Posted by **Anonymous** on **10/18/2017** at **10:57pm**

Comment

To clarify: In cases where we will need to get a Federal permit such as an Army Corp of Engineers Nationwide or Individual permit during a declared proclamation, which may take 30 - 60 days, how is this addressed?

Agree: 0, Disagree: 0

## #047

Posted by **Anonymous** on **10/09/2017** at **5:09pm**

Comment

Explain the judicial process? What are the remedies if this action is taken

Agree: 0, Disagree: 0

## #048

Posted by **Anonymous** on **10/02/2017** at **12:33am**

Comment

Pg. 20 (f) - suggest adding the statement from footnote: "Supplemental emergency proclamations would re-start the sixty day count."

Agree: 0, Disagree: 0

## #049

Posted by **Anonymous** on **09/20/2017** at **2:36pm**

Comment

item (g) addresses my question on this. Sorry

Agree: 0, Disagree: 0

## #050

Posted by **Anonymous** on **10/18/2017** at **7:56pm**

Comment

Including "property" here makes the exemption overly broad. Please consider/discuss the types of property threats that would be covered by this provision. For example, it appears to permit installation of a new seawall in front of a house or development without an EIS, if sea-level rise threatens "property" without proper consideration of the wall's effects.

Agree: 0, Disagree: 0

## #051

Posted by **Anonymous** on **09/20/2017** at **2:34pm**

Question

Does only the governor have this authority or County Mayors have this authority also?

Agree: 0, Disagree: 0

## #052

Posted by **Anonymous** on **10/02/2017** at **12:36am**

Comment

What about home damage from ocean run-up during King Tides? Some coastal properties should not be re-building in the same footprint.

Agree: 0, Disagree: 0

## #053

Posted by **DLNR - State Parks** on **10/18/2017** at **10:53pm**

Disregard prior typo insert:

To clarify: In cases where we will need to get a Federal permit such as an Army Corp of Engineers Nationwide or Individual permit which may take 30 - 60 days, how is addressed?

Agree: 0, Disagree: 0

## #054

Posted by **DLNR - State Parks** on **10/18/2017** at **10:45pm**

Question

To clarify: if the applicant is required to obtain numerous permit and reviews approvals such as County building, SMA and other approvals that have different timeframes in its review and approvals, is substantial commencement referring to last of the permits needed that may be ministerial vs a SMA permit that may go through public hearing and other processes?

Agree: 0, Disagree: 0

Reply by **State Parks** on **10/18/2017** at **10:58pm**

Question

Delete this comment, refers to another section

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-6 Applicant Actions**

(a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:

- (1) Implementing actions ~~which that~~ are either located in certain specified areas or contain certain specified ~~elements~~ components<sup>147/148</sup>; or
- (2) Actions that require certain types of amendments to existing county general plans.

The ~~approving~~<sup>149</sup> agency that initially received and agreed to process the request for approval shall require the applicant to prepare an EA of the proposed action at the earliest practicable time to determine whether an EIS is likely to be required; provided that if the approving agency determines, through its judgment and experience, that an EIS is likely to be required, the approving agency may authorize the applicant to choose not to prepare an EA and instead prepare an EIS that begins with the preparation of an EISPN.<sup>150</sup>

(b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the agency ~~processing~~<sup>151</sup> an applicant's request for approval to prepare an environmental assessment the applicant to prepare an EA<sup>152</sup>. There are ~~seven~~ ~~six~~<sup>153</sup> geographical categories, ~~five~~ ~~six~~<sup>154</sup> proposal elements component categories<sup>155/156</sup>; and two administrative categories.

- (1) The ~~seven~~ ~~six~~<sup>157</sup> geographical categories are:
  - (A) The use of state or county lands;
  - (B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;
  - (C) Any use within the shoreline area as defined in section 205A-41, HRS;
  - (D) Any use within any historic site as designated in the national register or Hawaii Register of Historic Places<sup>158</sup>;

<sup>147</sup> Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

<sup>148</sup> Replaces the suggested term "element" with the term "component" to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.

<sup>149</sup> Housekeeping. (Missing underlining in v0.1.)

<sup>150</sup> Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.

<sup>151</sup> Housekeeping. (Missing strikethrough in v0.1.)

<sup>152</sup> Housekeeping.

<sup>153</sup> Reflects reorganization of "helicopter facility" to a component category.

<sup>154</sup> Reflects reorganization of "helicopter facility" to a component category.

<sup>155</sup> Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

<sup>156</sup> Aligns language with "categories" used in previous sentence and uses the term "component" to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.

<sup>157</sup> Reflects reorganization of "helicopter facility" to a component category.

<sup>158</sup> Adds specificity.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (E) Any use within the Waikiki area of Oahu, the boundaries of which are
- 2 delineated in the land use ordinance as amended, establishing the
- 3 "Waikiki Special District";
- 4 (F) Any reclassification of any land classified as conservation district by the
- 5 state land use commission under chapter 205, HRS; and
- 6 ~~(G) The construction of a new, or the expansion or modification of an existing~~
- 7 ~~helicopter facilities facility<sup>159</sup> within the State which that by way of their~~
- 8 ~~its<sup>160</sup> activities may affect;<sup>161</sup> any land classified as conservation district~~
- 9 ~~by the state land use commission under chapter 205, HRS; the shoreline~~
- 10 ~~area as defined in section 205A-41, HRS; or,<sup>162</sup> any historic site as~~
- 11 ~~designated in the National Register or Hawaii Register as provided for in~~
- 12 ~~the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E,~~
- 13 ~~HRS of Historic Places<sup>163</sup>; or, until the statewide historic places inventory~~
- 14 ~~is completed, any historic site found by a field reconnaissance of the area~~
- 15 ~~affected by the helicopter facility and which that is under consideration for~~
- 16 ~~placement on the National Register or the Hawaii Register of Historic~~
- 17 ~~Places.<sup>164</sup>~~
- 18 (2) ~~The five six<sup>165</sup> proposal elements component categories~~ are:
- 19 (A) Wastewater treatment unit, except an individual wastewater system or
- 20 wastewater treatment unit serving fewer than fifty single-family dwellings
- 21 or the equivalent;
- 22 (B) Waste-to-energy facility;
- 23 (C) Landfill;
- 24 (D) Oil refinery; or
- 25 (E) Power-generating facility.
- 26 (F) The construction of a new, or the expansion or modification of an existing
- 27 helicopter facilities facility<sup>166</sup> within the State that by way of their its<sup>167</sup>
- 28 activities may affect;<sup>168</sup> any land classified as conservation district by the
- 29 state land use commission under chapter 205, HRS; the shoreline area
- 30 as defined in section 205A-41, HRS; or,<sup>169</sup> any historic site as designated

159 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

160 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

161 Housekeeping.

162 Housekeeping.

163 Housekeeping. Unnecessary specificity.

164 Deletes and moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

165 Reflects reorganization of "helicopter facility" to a component category.

166 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

167 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

168 Housekeeping.

169 Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of Historic Places<sup>170</sup>; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which that is under consideration for placement on the National Register or the Hawaii Register of Historic Places.<sup>171</sup>

(23) The two administrative categories are:

- (A) Any amendment to existing county general plans, however denominated, which may include, but are not be limited to, development plans,<sup>172</sup> or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted<sup>055</sup> and
- (B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which 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.

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

<sup>170</sup> Housekeeping. Unnecessary specificity.

<sup>171</sup> Moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

<sup>172</sup> Housekeeping.

**#055**

Posted by **Anonymous** on **10/02/2017** at **12:41am**  
Comment

Pg 23 (3-A). Recommend deleting the sentence that is in parenthesis: (Actions by a county initiating a comprehensive review....)

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-7 Multiple or Phased Applicant or Agency**  
2 **Actions**

3 A group of actions proposed by an agency or an applicant shall be treated as a single action  
4 when:

- 5 (1) The component actions are phases or increments of a larger total undertaking  
6 and lack independent utility<sup>173</sup>;
- 7 (2) An individual project action is a necessary precedent for to<sup>174</sup> a larger project  
8 action<sup>175</sup>;
- 9 (3) An individual project action<sup>176</sup> represents a commitment to a larger project  
10 action<sup>177</sup>; or
- 11 (4) The actions in question are essentially identical and a single statement EIS will  
12 adequately address the impacts of each individual action and those of the group  
13 of actions as a whole.

14  
15 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
16

173 Incorporates the threshold for determining improper segmentation.

174 Stylistic change.

175 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

176 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

177 Replaces "project" with "action" because it could be an individual program or project that is part of a larger program or project.

## #056

Posted by **Anonymous** on **10/02/2017** at **2:51pm**  
Comment

The phrase "independent utility" is not representative of settled case law and should not be part of HAR chapter 11-200. Please see the comment from KAHEA: The Hawaiian-Environmental Alliance.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-8 Exempt Classes of Action Exemption Notices<sup>178</sup>**

059

(a) Chapter 343, HRS, states that procedures whereby specific Specific<sup>179</sup> types of actions, because they will probably have minimal or no significant effects, individually and cumulatively, on the environment,<sup>180</sup> can be declared exempt from the preparation of an EA.<sup>181</sup> a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction<sup>182</sup> or expertise as to the propriety of the exemption. Government Agency<sup>183</sup> activities that do not rise to the level of being a project or program program or project, or are ordinary functions that by their nature do not have the potential to adversely affect the environment more than negligibly, which may include, among other activities, routine repair, maintenance, purchase of supplies, and administrative actions involving personnel only, shall not be considered projects or programs programs or projects for the purposes of Chapter 343, HRS.<sup>184</sup> Actions declared exempt from the preparation of an environmental assessment EA under this section are not exempt from complying with any other applicable statute or rule. The following types of projects or programs are eligible for exemption<sup>185</sup> list represents exempt classes of action:

058

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible minor<sup>186</sup> or no expansion or change of use beyond that previously existing;
- (2) Replacement or reconstruction of existing structures and facilities<sup>057</sup> where the new structure will be located generally on the same site and will have substantially the same purpose<sup>060</sup> capacity, density, height, and dimensions as the structure replaced;
- (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment

<sup>178</sup> Renames to shift focus from the “classes” (a term no longer used) to the notice.

<sup>179</sup> Removes unnecessary language.

<sup>180</sup> Removes unnecessary language. “Significant effects” as defined are “on the environment”.

<sup>181</sup> Incorporates language direction directly from chapter 343, HRS.

<sup>182</sup> Housekeeping.

<sup>183</sup> Clarifies that agencies are the government actors contemplated in this section, as opposed to other branches of the government or the federal government.

<sup>184</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

<sup>185</sup> Replaces “classes” language with “types”.

<sup>186</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

## #057

Posted by **Anonymous** on **10/02/2017** at **12:43am**

Comment

PROVIDED these "structures and facilities" were not impacted by coastal hazards.

Agree: 0, Disagree: 0

## #058

Posted by **Anonymous** on **09/20/2017** at **3:26pm**

Comment

Is this the section where agencies shall have their own exemption list? This is not clear and if it does should note that retro contains timeline on updates. I'm confused on where agency exemption list requirements went?

Agree: 0, Disagree: 0

Reply by **Anonymous** on **10/09/2017** at **5:12pm**

Comment

Agreed. There needs to be a clear delineation of expectations between the groups that have published exemption lists, and those that have not.

Agree: 0, Disagree: 0

## #059

Posted by **Anonymous** on **09/20/2017** at **3:17pm**

Question

Why title removes Exemption Classes but text covers exemptions?

Agree: 0, Disagree: 0

## #060

Posted by **Anonymous** on **10/18/2017** at **8:10pm**

Consider adding "functions" or "operations" to this sentence. A change to the functioning or operation of a facility may introduce new environmental impacts that differ from those of the structure/facility being replaced.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 and facilities and the alteration and modification of same, including, but not
- 2 limited to:
- 3 (A) Single-family residences less than 3,500 square feet, as measured by the
- 4 controlling law under which the proposed action is being considered,<sup>187</sup>
- 5 if<sup>188</sup> not in conjunction with the building of two or more such units;
- 6 (B) Multi-unit structures designed for not more than four dwelling units if not
- 7 in conjunction with the building of two or more such structures;
- 8 (C) Stores, offices, and restaurants designed for total occupant load of twenty
- 9 persons or le<sup>063</sup>er structure, if not in conjunction with the building of two
- 10 or more such structures; and
- 11 (D) Water, sewage, electrical, gas, telephone, and other essential public
- 12 utility services extensions to serve such structures or facilities; accessory
- 13 or appurtenant structures including garages, carports, patios, swimming
- 14 pools, and fences; and, acquisition of utility easements;
- 15 (4) Minor alterations in the conditions of land, water, or vegetation;
- 16 (5) Basic data collection, research, experimental management, and resource and
- 17 infrastructure testing and<sup>189</sup> evaluation activities ~~which that~~ do not result in a
- 18 serious or major disturbance to an environmental resource;
- 19 (6) Construction or placement of <sup>062</sup>or structure<sup>061</sup>ccessory to existing facilities;
- 20 (7) Interior alterations involving things such as partitions, plumbing, and electrical
- 21 conveyances;
- 22 (8) Demolition of structures, except those structures located on any historic site as
- 23 designated in the national register or Hawaii Register of Historic Places<sup>190</sup>, or that
- 24 are under consideration for placement on the national register or the Hawaii
- 25 Register of Historic Places<sup>191</sup> as provided for in the National Historic Preservation
- 26 Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E,
- 27 HRS<sup>192</sup>;
- 28 (9) Zoning variances except shoreline set-back variances; ~~and~~<sup>193</sup>
- 29 ~~(10) Continuing administrative activities including, but not limited to purchase of~~
- 30 ~~supplies and personnel-related actions.~~<sup>194</sup>
- 31 (44 10<sup>195</sup>)Acquisition of land and existing structures, including single or multi-unit
- 32 dwelling units, for the provision of affordable housing, involving no material

<sup>187</sup> Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

<sup>188</sup> Stylistic; mirrors provision below (B).

<sup>189</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

<sup>190</sup> Adds specificity.

<sup>191</sup> Aligns language with section 343-5(a)(8)(C), HRS.

<sup>192</sup> Unnecessary language.

<sup>193</sup> Housekeeping.

<sup>194</sup> Deletes language because it is addressed at the beginning of paragraph (a).

<sup>195</sup> Housekeeping. Renumbering this and subsequent paragraphs.

## #061

Posted by **Anonymous** on **10/02/2017** at **12:45am**  
Comment

This sq. footage is not a "very minor project" and seems contrary to the intent of the rules.

Agree: 0, Disagree: 0

## #062

Posted by **Anonymous** on **10/02/2017** at **12:47am**  
Comment

Meant to say that 3,500 sf should not be considered a minor structure. And parameters for "minor structures" should be defined.

Agree: 0, Disagree: 0

## #063

Posted by **Anonymous** on **10/18/2017** at **8:06pm**  
Comment

"Less" should be "fewer."

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 change of use beyond ~~that~~ previously existing ~~uses,~~<sup>196</sup> and for which the  
 2 legislature has appropriated or otherwise authorized funding<sup>197</sup>; ~~and~~<sup>198</sup>  
 3 (11) New construction of affordable housing that only has use of state or county lands  
 4 or funds as the sole<sup>199</sup> requirement for compliance with<sup>200</sup> chapter 343, HRS, and  
 5 as proposed<sup>201</sup> is consistent with existing state urban land classification, existing  
 6 county residential or mixed use zoning classification, and applicable federal,  
 7 state, and county development standards.<sup>202</sup>  
 8  
 9 (b) All exemptions under the ~~classes~~ types<sup>203</sup> in this section are inapplicable when the  
 10 cumulative impact of planned successive actions in the same place, over time, is  
 11 significant, or when an action that is normally insignificant in its impact on the  
 12 environment may be significant in a particularly sensitive environment.  
 13  
 14 (c) Any agency, at any time, may request that a new exemption ~~class~~ type<sup>204</sup> be added, or  
 15 that an existing one be amended or deleted. The request shall be submitted to the  
 16 council, in writing, and contain detailed information to support the request as set forth in  
 17 section 11-201-16, HAR, environmental council rules.  
 18  
 19 ~~(d) — Each agency, through time and experience, shall develop its own list of specific~~  
 20 ~~types of actions which fall within the exempt classes types above~~<sup>205</sup>, ~~as long as these~~  
 21 ~~lists are consistent with both the letter and intent expressed in these exempt classes~~  
 22 ~~here~~<sup>206</sup> ~~and chapter 343, HRS. These lists and any amendments to the lists shall be~~  
 23 ~~submitted to the council for review and concurrence. The lists shall be reviewed~~  
 24 ~~periodically by the council.~~  
 25  
 26 ~~(e)~~<sup>207</sup> ~~Actions that are clearly covered by an agency exemption list that has received~~  
 27 ~~council concurrence and do not have any potential to produce significant impacts do not~~

<sup>196</sup> Clarifies what "that" refers to.

<sup>197</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates ~~and compiles~~ the 2007 change.

<sup>198</sup> Housekeeping.

<sup>199</sup> Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, ~~not that the action only uses state or county funds or lands.~~

<sup>200</sup> Stylistic change.

<sup>201</sup> Removes ambiguity as to whether the project "as implemented" must be consistent.

<sup>202</sup> Adds affordable housing as an exemption type, with ~~caveats~~ the following caveats: 1) that the only trigger is use ~~of~~ state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

<sup>203</sup> Housekeeping.

<sup>204</sup> Housekeeping.

<sup>205</sup> Housekeeping.

<sup>206</sup> Housekeeping.

<sup>207</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 ~~require documentation.~~<sup>208</sup> ~~Actions with no documentation may still be subject to the~~  
2 ~~public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter~~  
3 ~~343, HRS.~~<sup>209</sup>  
4  
5 ~~(f) For an action that an agency considered exempt according to the criteria in~~  
6 ~~paragraph (a) but is not clearly covered by the agency's exemption list, or is on the~~  
7 ~~agency's exemption list but that list has not received council concurrence within the past~~  
8 ~~five years, the agency shall undertake a systematic analysis to determine whether the~~  
9 ~~action merits exemption consistent with one or several of the types listed in paragraph~~  
10 ~~(a).~~<sup>210</sup> ~~For such actions, the agency shall obtain the advice of outside agencies or~~  
11 ~~individuals having jurisdiction or expertise as to the propriety of the exemption. An action~~  
12 ~~may not be segmented per section 11-200-7 so as to appear to be consistent with~~  
13 ~~several types listed in paragraph (a).~~<sup>211</sup>  
14  
15 ~~(e g) Each agency shall maintain records of such~~<sup>212</sup> ~~actions, called exemption~~  
16 ~~notices,~~<sup>213</sup> ~~which it has found to be exempt from the requirements for preparation of an~~  
17 ~~environmental assessment EA in chapter 343, HRS, and each agency shall produce the~~  
18 ~~records for review upon request. The agency shall provide a means to notify and accept~~  
19 ~~input from the public in a timely manner after the exemption declaration is made. An~~  
20 ~~agency may request the office to publish the exemption notice in the periodic bulletin.~~  
21 ~~The public's right to judicial proceeding on the lack of an assessment under chapter 343,~~  
22 ~~HRS shall commence from the date the public is notified of the exemption through the~~  
23 ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~<sup>214</sup>  
24

<sup>208</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de minimis* but may not require the level of consultation and documentation associated with typical projects or programs.

<sup>209</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers are out" and the agency may have erred in its decision to not prepare an EA.

<sup>210</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

<sup>211</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

<sup>212</sup> Housekeeping.

<sup>213</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

<sup>214</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 ~~(f h) In the event the governor declares a state of emergency pursuant to chapter~~  
2 ~~127A, HRS,<sup>215</sup> the governor may exempt any affected program or action from complying~~  
3 ~~with this chapter. has authority to suspend laws, including chapter 343, HRS. In such an~~  
4 ~~event, no exemption declaration is required and the proposing agency or approving~~  
5 ~~agency shall file an exemption notice in its records that the emergency action was~~  
6 ~~undertaken pursuant to a specific emergency proclamation.<sup>216</sup>~~

7  
8 ~~(i) An emergency action that is not initiated within the period of the governor's~~  
9 ~~emergency proclamation shall no longer be considered an emergency action and~~  
10 ~~therefore shall be subject to chapter 343, HRS.<sup>217/218</sup>~~

11  
12 ~~(d) Each agency, through time and experience, shall develop its own list consistent~~  
13 ~~with both the letter and intent expressed here and in chapter 343, HRS of specific~~  
14 ~~programs or projects that the agency considers to be included within the exempt types~~  
15 ~~above<sup>068</sup> these lists and any amendments to the lists shall be submitted to the council for~~  
16 ~~review and concurrence. The lists shall be reviewed periodically by the council.<sup>219</sup>~~

17  
18 ~~(e) Each agency shall create exemption notices for actions that it has found to be~~  
19 ~~exempt from the requirements for preparation of an EA. Each agency shall produce the~~  
20 ~~exemption notices for review upon request<sup>065</sup> of the public or an agency.<sup>220</sup>~~

21  
22 ~~(f) Agencies shall consult on the propriety<sup>066</sup> of an exemption and publish exemption~~  
23 ~~notices<sup>067</sup> to the office. Consultation and publication of an exemption notice is not~~  
24 ~~required when:~~

25 ~~(1) The council has concurred with the agency's exemption list no more than seven~~  
26 ~~years before the agency initiates the action or authorizes an applicant to initiate~~  
27 ~~the action;~~

28 ~~(2) The action is consistent with the letter and intent of the agency's exemption list;~~  
29 ~~and~~

30 ~~(3) The action does not have any potential to produce significant impacts.<sup>221</sup>~~

<sup>215</sup> States the name of the statute for emergency proclamations.

<sup>216</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>217</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.

<sup>218</sup> Deletes subsections (d) - (i) and reorganizes content to increase readability.

<sup>219</sup> Requires an agency to create an exemption list and submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>220</sup> Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200-5.

<sup>221</sup> Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Provides an exception to the consultation and

## #064

Posted by **Anonymous** on **10/09/2017** at **5:11pm**

Question

Are there any incentives to get agencies to provide this list or consequences to not providing the list?

Agree: 0, Disagree: 0

## #065

Posted by **Anonymous** on **10/18/2017** at **9:59pm**

Comment

The lists should be made publicly available without imposing the burden on stakeholders of having to first, somehow know they exist, and second, request them for review.

Agree: 0, Disagree: 0

## #066

Posted by **DLNR - State Parks** on **10/18/2017** at **10:46pm**

Question

To clarify: Is there a set time period when the Council periodically reviews an agency's list of exemptions?

Agree: 0, Disagree: 0

## #067

Posted by **DLNR - State Parks** on **10/18/2017** at **10:47pm**

Comment

To clarify: What types of documentation is required of the consultation? This vary from an email transmission to a Board/Commission approved action.

Agree: 0, Disagree: 0

## #068

Posted by **Anonymous** on **10/18/2017** at **9:58pm**

Comment

There is no process for obtaining public input here with the result that stakeholders are required to spend the money to take the decision(s) to court, which is an undue burden. The lists should be published/made publicly available, and opportunities for public input should be required, in addition to council review, as well as an obligation imposed on the agencies to respond to the public input.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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(g) Actions with no published exemption notice may still be subject to the public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days of the agency's decision to carry out the action or from the date the public becomes aware of the exemption notice, whichever is earlier.<sup>222</sup>

(h) For consultation on the propriety of an exemption, an agency shall undertake an analysis to determine whether the action merits exemption consistent with one or several of the types listed in paragraph (a). The agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. This analysis and consultation shall be documented in the exemption notice.<sup>223</sup>

(i) To publish an exemption notice, the agency shall submit the exemption notice to the office per section 11-200-3 for publication in the next periodic bulletin. The public's right to a judicial proceeding on the lack of an assessment under chapter 343, HRS, shall commence from the date of publication in the notice.<sup>224</sup>

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

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publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

<sup>222</sup> Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.

<sup>223</sup> Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

<sup>224</sup> Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public's right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.

## #069

Posted by **Anonymous** on **09/25/2017** at **10:06pm**  
Comment

HRS § 343-7 is clear and unambiguous. Any judicial action "shall be initiated 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."

Any language that extends these dates clearly violates the legislature's limitation.

Agree: 0, Disagree: 0

## #070

Posted by **DLNR - State Parks** on **10/18/2017** at **10:48pm**

To clarify: what extent of analysis and documentation are required? For example if an agency's list allows the construction of a 10 fixture comfort station, what is expected for the agency to provide? Design plans, or discussion with agency staff, or discussion with other agencies, etc?

Agree: 0, Disagree: 0

## #071

Posted by **Anonymous** on **09/25/2017** at **10:07pm**  
Comment

HRS § 343-7 is clear and unambiguous. Any judicial action "shall be initiated 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."

Any language that extends these dates clearly violates the legislature's limitation.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 6 Determination of Significance

2 **§11-200-9 Assessment of Agency Actions and**  
3 **Applicant Actions**

4 (a) For agency actions, except those actions exempt from the preparation of an  
5 environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the  
6 proposing agency shall:

7 (1) Seek, at the earliest practicable time, the advice and input of the county agency  
8 responsible for implementing the county's general plan for each county in which  
9 the proposed action is to occur, and consult with other agencies having  
10 jurisdiction or expertise as well as those citizen groups and individuals ~~which~~ that  
11 the proposing agency <sup>072</sup>sonably believes ~~to~~ may<sup>225</sup> be affected;

12 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~  
13 the<sup>226</sup> statutory conditions under section 343-5(a), HRS, that<sup>227</sup> require the  
14 preparation of an environmental assessment EA;

15 (3) Prepare an environmental assessment EA pursuant to section 11-200-10 ~~of this~~  
16 ~~chapter which shall also identify~~ that identifies<sup>228</sup> potential impacts, ~~evaluate~~  
17 evaluates<sup>229</sup> the potential significance of each impact, and ~~provide~~ provides<sup>230</sup> for  
18 detailed study of significant impacts;

19 (4) Determine, after reviewing the environmental assessment EA described in  
20 paragraph (3), and considering the significance criteria in section 11-200-12,  
21 whether the proposed action warrants an anticipated ~~negative declaration~~ FONSI  
22 or an ~~environmental impact statement preparation notice~~ EISPN, provided that  
23 for an ~~environmental impact statement preparation notice~~ EISPN, the proposing  
24 agency shall inform the accepting authority of the proposed action;

25 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~  
26 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
27 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the  
28 completed informational form referenced<sup>231</sup> in section 11-200-3(d)<sup>232</sup>, and ~~four~~  
29 ~~copies of~~<sup>233</sup> the supporting environmental assessment EA (a draft environmental  
30 assessment EA for the anticipated ~~negative declaration~~ FONSI or a final  
31 environmental assessment EA for the environmental impact statement

225 Housekeeping.

226 Housekeeping.

227 Housekeeping.

228 Housekeeping.

229 Housekeeping.

230 Housekeeping.

231 Housekeeping.

232 Housekeeping.

233 OEQC only needs one copy, not four.

**#072**

Posted by **Anonymous** on **10/09/2017** at **5:20pm**

Question

Although there is an established criterion for selecting proposed agencies for consultations, circulation, and deposition of DEA/DEIS documents, what is the criterion for "citizen groups" and "individuals"? Will the selection of these types of groups remain broadly discretionary?

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1           ~~preparation notice~~ EISPN, when applicable<sup>234</sup>) with the office in accordance with
- 2           sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of
- 3           this chapter;
- 4           (6) ~~Distribute~~ Circulate<sup>235</sup>, concurrently with the filing in paragraph (5), the draft
- 5           ~~environmental assessment~~ EA to other agencies having jurisdiction or expertise
- 6           as well as citizen groups and individuals ~~which~~ that the proposing agency
- 7           reasonably believes ~~to~~ may<sup>236</sup> be affected;
- 8           (7) Deposit, concurrently with the filing in paragraph (5), one paper<sup>237</sup> copy of the
- 9           draft ~~environmental assessment~~ EA at the nearest state library in each county in
- 10          which the proposed action is to occur and one paper copy at the Hawaii
- 11          Documents Center<sup>238</sup>;
- 12          (8) Receive and respond to public comments in accordance with:
- 13          (A)    section 11-200-9.1 for draft ~~environmental assessments~~ EAs for
- 14          anticipated ~~negative declaration~~ FONSI determinations; or
- 15          (B)    section 11-200-15 for ~~environmental assessments~~ EAs for ~~preparation~~
- 16          ~~notices~~ EISPNS.
- 17          For draft ~~environmental assessments~~ EAs, the proposing agency shall revise the
- 18          ~~environmental assessment~~ EA to incorporate public comments as appropriate,
- 19          and append copies of comment letters and responses in the ~~environmental~~
- 20          ~~assessment~~ EA (the draft ~~environmental assessment~~ EA as revised, shall be filed
- 21          as a final ~~environmental assessment~~ EA as described in section 11-200-11.2);
- 22          and
- 23          (9)    As appropriate, issue either a ~~negative declaration~~ FONSI determination<sup>239</sup> or an
- 24          ~~environmental impact statement preparation notice~~ EISPN pursuant to the
- 25          requirements of section 11-200-11.2, ~~provided that for~~ For<sup>240</sup> ~~preparation notice~~
- 26          EISPNS determinations<sup>241</sup>, the proposing agency shall proceed to section 11-
- 27          200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-
- 28          200-13, and 11-200-14, as appropriate.
- 29

<sup>234</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>235</sup> The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>236</sup> Housekeeping.

<sup>237</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>238</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>239</sup> Removes redundant term “definition” as a FONSI is by definition a determination.

<sup>240</sup> Housekeeping.

<sup>241</sup> An EISPN is by definition a determination.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (b) For applicant actions, except those actions ~~exempt~~ **excluded**<sup>242</sup> from the preparation of  
 2 an ~~environmental assessment~~ EA pursuant to section 343-5, HRS, or those actions  
 3 ~~which that~~ the approving agency declares exempt pursuant to section 11-200-8, the  
 4 approving agency shall:
- 5 (1) Require the applicant, at the earliest practicable time, to seek the advice and  
 6 input of the lead county agency responsible for implementing the county's  
 7 general plan for each county in which the proposed action is to occur, and  
 8 consult with other agencies having jurisdiction or expertise as well as those  
 9 citizen groups and individuals ~~which that~~ the approving agency reasonably  
 10 believes to be affected;
- 11 ~~(2) Require the applicant to provide whatever information the approving agency~~  
 12 ~~deems necessary to~~<sup>243</sup> ~~complete the preparation of an environmental~~  
 13 ~~assessment prepare an EA in accordance with section 11-200-10;~~<sup>244</sup>
- 14 ~~(3)~~ **2**<sup>245</sup> Within thirty days from the date of receipt of the applicant's ~~complete~~ **completed**  
 15 request for approval to the approving agency:
- 16 (A) ~~prepare an environmental assessment pursuant to section 11-200-10;~~  
 17 ~~and~~
- 18 (B) ~~determine, after reviewing the environmental assessment and considering~~  
 19 ~~the significance criteria in section 11-200-12 whether the proposed action~~  
 20 ~~warrants an anticipated negative declaration or an environmental impact~~  
 21 ~~statement preparation notice;~~  
 22 ~~require the applicant~~<sup>246</sup> ~~to prepare a draft EA pursuant to section 11-200-10;~~<sup>247</sup>
- 23 ~~(4)~~ **3**<sup>248/249</sup> Determine, after reviewing the draft EA and considering the significance  
 24 criteria in section 11-200-12, whether the proposed action warrants an  
 25 anticipated FONSI or an EISPN;<sup>250</sup>
- 26 ~~(5)~~ **4**<sup>251</sup> File the appropriate notice of determination (anticipated ~~negative declaration~~  
 27 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
 28 accordance with section 11-200-11.1 or 11-200-11.2), the completed

<sup>242</sup> Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.

<sup>243</sup> Narrows the language to focus on the EA on the content requirements.

<sup>244</sup> This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.

<sup>245</sup> Housekeeping (renumbering).

<sup>246</sup> Shifts the focus of preparation to the applicant per Act 172 (2012).

<sup>247</sup> Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within ~~30~~ **thirty** days of receipt of a request for approval which course of environmental review the applicant is to take.

<sup>248</sup> Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

<sup>249</sup> Housekeeping (renumbering).

<sup>250</sup> Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.

<sup>251</sup> Housekeeping (renumbering).



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 informational form referenced<sup>252</sup> in section 11-200-3(d)<sup>253</sup> and ~~four copies of the~~  
2 supporting environmental assessment EA (a draft environmental assessment EA  
3 for the anticipated ~~negative declaration~~ FONSI or a final environmental  
4 assessment EA for the environmental impact statement preparation notice  
5 EISPN, when applicable<sup>254</sup>) with the office in accordance with sections 11-200-3,  
6 and 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter<sup>255</sup>;  
7 ~~(6 5)~~<sup>256</sup> Distribute ~~Circulate~~<sup>257</sup>, or require the applicant to ~~distribute~~ circulate<sup>258</sup>,  
8 concurrently with the filing in paragraph (4), the draft environmental assessment  
9 EA to other agencies having jurisdiction or expertise as well as citizen groups  
10 and individuals ~~which~~ that the approving agency reasonably believes to be  
11 affected;  
12 ~~(7 6)~~<sup>259</sup> Deposit or require the applicant to deposit, concurrently with the filing in  
13 paragraph (4), one paper<sup>260</sup> copy of the draft environmental assessment EA at  
14 the nearest state library in each county in which the proposed action is to occur  
15 and one paper copy at the Hawaii Documents Center<sup>261</sup>;  
16 ~~(8 7)~~<sup>262</sup> Receive public comments, transmit copies of public comments to the applicant  
17 and require Require the applicant to receive and respond to public commen<sup>073</sup>all  
18 in accordance with section 11-200-9.1 for draft environmental assessment EA, or  
19 11-200-15 for preparation notices EISPNs and their associated final  
20 environmental assessment EA. For draft environmental assessment EA, the  
21 approving agency shall require the applicant:  
22 (A)<sup>263</sup> to ~~provide~~ revise the draft EA with<sup>264</sup> ~~whatever~~ information the approving  
23 agency deems necessary in accordance with section 11-200-10<sup>265</sup> to

<sup>252</sup> Housekeeping.

<sup>253</sup> Housekeeping.

<sup>254</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>255</sup> Adds language to ensure that other sections are fulfilled as well.

<sup>256</sup> Housekeeping (renumbering).

<sup>257</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>258</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>259</sup> Housekeeping (renumbering).

<sup>260</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>261</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>262</sup> Housekeeping (renumbering).

<sup>263</sup> Breaks up the paragraph so that the three requirements for the applicant are easier to read.

<sup>264</sup> Housekeeping.

<sup>265</sup> Emphasizes that the final EA content should still meet the EA content requirements as set for forth in section 10.

**#073**

Posted by **Anonymous** on **10/02/2017** at **12:51am**  
Comment

Consider adding: RESPOND DIRECTLY TO THE COMMENTOR [as opposed to waiting to respond in the FEA] Might also want to include a timeframe for the Applicant to respond.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 ~~revise the draft environmental assessment to<sup>266</sup> inform its determination~~  
 2 ~~for a FONSI or EISPN, taking into account comments on the draft EA<sup>267</sup>;~~  
 3 (B) to incorporate comments as appropriate; and,  
 4 (C) to include copies of comment letters and the applicant's<sup>268</sup> responses,  
 5 ~~(the The<sup>269</sup> revised draft environmental assessment EA, as revised, shall be filed~~  
 6 ~~as a final environmental assessment EA as described in section 11-200-11.2)<sup>270</sup>;~~  
 7 and  
 8 (9 8)<sup>271</sup> As appropriate, issue a negative declaration FONSI determination<sup>272</sup> or an  
 9 environmental impact statement preparation notice EISPN with appropriate  
 10 notice of determination thereof pursuant to section 11-200-11.2 within thirty  
 11 days<sup>273</sup> from the end of the thirty-day public comment period of receiving  
 12 information required for delivery to the approving agency pursuant to paragraph 8  
 13 7<sup>274</sup>/<sup>275</sup>. For preparation notice EISPN determinations, the approving agency shall  
 14 proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-  
 15 10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.
- 17 (c) For agency or applicant actions, the proposing agency or the applicant approving  
 18 agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable  
 19 range of<sup>276</sup> alternatives, in addition to the proposed action in the environmental  
 20 assessment EA.<sup>277</sup>
- 22 (d) For agency or applicant actions, if the agency determines, through its judgment and  
 23 experience, that an EIS is likely to be required, the agency may choose not to prepare  
 24 an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and

<sup>266</sup> Housekeeping. Removes redundant language.

<sup>267</sup> Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.

<sup>268</sup> Housekeeping.

<sup>269</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>270</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>271</sup> Housekeeping (renumbering).

<sup>272</sup> Removes redundant language. A FONSI is defined as a determination in section 11-200-2.

<sup>273</sup> Removes inadvertent strikethrough.

<sup>274</sup> Paragraphs renumbered.

<sup>275</sup> Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.

<sup>276</sup> Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.

<sup>277</sup> Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.

**#074**

Posted by **Anonymous** on **10/02/2017** at **12:52am**  
Comment

"Reasonable" is a subjective word subject to interpretation. Suggest including "No fewer than three alternatives."

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            instead shall prepare or shall cause to be prepared<sup>278</sup> an EIS that begins with an  
2            EISPN.<sup>279</sup>  
3  
4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
5  
6  
7

---

<sup>278</sup> Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

<sup>279</sup> Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-9.1 Public Review & Response Requirements  
for Draft Environmental Assessments for Anticipated  
Negative Declaration Finding of No Significant Impact<sup>280</sup>  
Determinations & Addenda to Draft Environmental  
Assessments**

(a) This section shall apply only if a proposing agency or an approving agency applicant<sup>281</sup> anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that agency or applicant<sup>282</sup> has completed the draft EA requirement<sup>075</sup> section 11-200-9(a), paragraphs (1), (2), (3), (4), (5), (6) and (7) for agencies<sup>283</sup>, or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6) for applicants<sup>284</sup>, as appropriate.

(b) ~~The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental<sup>285</sup> assessment EA was published in the periodic bulletin and shall continue for a period of thirty days. Unless mandated otherwise by statute<sup>286</sup>, for agency actions and applicant actions, the period for public review and for submitting written comments shall commence from the date of notice of availability of the draft EA is initially issued in the periodic bulletin and shall continue for a period of thirty calendar da<sup>076</sup><sup>287</sup> Written comments sent<sup>288</sup> to the proposing agency or approving agency applicant<sup>289</sup>, whichever is applicable, with a copy of the comments to the applicant, if applicable,<sup>290</sup> or proposing agency,<sup>291</sup> shall be received by<sup>292</sup> or postmarked to the proposing agency or approving agency applicant<sup>293</sup>, within the thirty-day period. Any~~

<sup>280</sup> Housekeeping.

<sup>281</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA.

<sup>282</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA.

<sup>283</sup> These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

<sup>284</sup> These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

<sup>285</sup> Housekeeping. (v0.1 omitted strikethrough)

<sup>286</sup> Acknowledges that the public review period may be altered for certain actions by statute.

<sup>287</sup> Measures time consistently in the process. Adds clarity to regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

<sup>288</sup> Stylistic change.

<sup>289</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

<sup>290</sup> Clarifies that applicants are not always involved and when not involved, not a copy of the comments need to be sent to the applicant.

<sup>291</sup> Redundant; the proposing agency is already as identified as receiving comments.

<sup>292</sup> Stylistic change.

<sup>293</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA.

## #075

Posted by **Anonymous** on **10/02/2017** at **12:53am**

Comment

Suggest reversing these phrases so that Draft EA comes before FONSI determination. You can't anticipate a negative declaration until the DEA is completed.

Agree: 0, Disagree: 0

## #076

Posted by **Anonymous** on **10/18/2017** at **10:08pm**

Comment

30 calendar days may be too short a time period. 30 working days is more appropriate.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 comments outside of the thirty-day period need not be ~~considered or~~<sup>294</sup> responded to nor  
 2 ~~considered in the final EA. However, for a proposed site for a new correctional facility or~~  
 3 ~~for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS,~~  
 4 ~~the period for public review and submitting written comments thirty-day period shall be a~~  
 5 ~~sixty-day period days.~~<sup>295/296</sup>  
 6  
 7 (c) For agency actions, the proposing agency shall<sup>297</sup> respond in writing to all comment<sup>078</sup>  
 8 received or postmarked during the ~~thirty-day~~ ~~statutorily mandated~~<sup>298</sup> review period,  
 9 incorporate comments ~~into the final EA~~<sup>299</sup> as appropriate,<sup>300</sup> and append the comments  
 10 and responses ~~in to~~<sup>301</sup> the final environmental assessment EA. Each response shall be  
 11 sent directly to the person commenting, with copies of the response also sent to the  
 12 office. <sup>080</sup> ~~number of comments are identical or very similar, the proposing agency may~~  
 13 ~~group the comments and prepare a single standard response for each group. When~~  
 14 ~~grouping comments, the agency must include ea~~<sup>079</sup> ~~ame of the commentor along with~~  
 15 ~~the grouped response. One representative copy of comments that are identical or very~~  
 16 ~~similar may be included in the final EA rather than reproducing each individual comment.~~  
 17 ~~All individual comments and representative copies of identical or very similar comments~~  
 18 ~~the~~<sup>302</sup> ~~must be attached~~ ~~appended~~ to the final EA regardless of whether the agency  
 19 believes the comments merit individual discussion in the body of the final EA.<sup>303</sup>  
 20  
 21

<sup>294</sup> Stylistic change.

<sup>295</sup> Incorporates the public comment period and time limit from HRS § 353-16.35.

<sup>296</sup> Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.

<sup>297</sup> Acknowledges that some statutes may modify the public review and comment period.

<sup>298</sup> Acknowledges that other statutes may require comment periods of varying lengths.

<sup>299</sup> Clarifies that the comments are included in the final EA.

<sup>300</sup> Housekeeping.

<sup>301</sup> Housekeeping.

<sup>302</sup> Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en mass and to focus responses on the issues raised by comments rather than on responding to individual commentors.

<sup>303</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

077



## #077

Posted by **Anonymous** on **10/19/2017** at **7:18pm**

I don't see language in the revised rules that specifies that a response does not need to be sent to each person that comments. I only see language that specifies that the comments can be grouped and given a standard response, and that they don't need to be individually listed in the FEA (but must be appended to the FEA). If the intent is that a response doesn't need to be mailed to each commentor, then this should be clarified.

Agree: 0, Disagree: 0

## #078

Posted by **Anonymous** on **10/02/2017** at **12:57am**

Comment

Suggest adding: ... in writing TO ALL COMMENTORS who submitted information during the review period....

Agree: 0, Disagree: 0

## #079

Posted by **Anonymous** on **10/18/2017** at **10:09pm**

Edit - should be the name of each commentor, not each name

Agree: 0, Disagree: 0

## #080

Posted by **Anonymous** on **10/02/2017** at **12:55am**

Comment

Consider starting a new paragraph (c) 1 for the "IF" scenario.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (d) For applicant actions, the applicant shall respond in writing to all comments receive<sup>081</sup>  
 2 postmarked during the thirty-day review period and ~~the approving agency shall~~<sup>304</sup>  
 3 incorporate ~~or~~ comments into the final EA as appropriate, and<sup>305</sup> append the comments  
 4 and responses in to<sup>306</sup> the final ~~environmental assessment EA~~. If a number of comments  
 5 are identical or very similar, the applicant may group the comments a and<sup>307</sup> prepare a  
 6 single standard response for each group. When grouping comments, the applicant must  
 7 include ea<sup>082</sup> ame of the commentor along with the grouped response.<sup>308</sup> The  
 8 comments must be attached to the final EA regardless of whether the approving agency  
 9 believes the comments merit individual discussion in the body of the final EA.<sup>309</sup> ~~Each~~  
 10 ~~response shall be sent directly to the person commenting with a copy to the office.~~<sup>310</sup> ~~A~~  
 11 ~~copy of each response shall be sent to the approving agency for its timely preparation of~~  
 12 ~~a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or~~  
 13 ~~11-200-11.2.~~<sup>311</sup>
- 14
- 15 (e) An addendum document to a draft ~~environmental assessment EA~~ shall reference the  
 16 original draft ~~environmental~~<sup>312</sup> ~~assessment EA~~ it attaches to and shall comply with all  
 17 applicable public review and comment requirements set forth in sections 11-200-3 and  
 18 11-200-9.

19

20 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp: HRS §343-3, 343-5, 343-  
 21 6)

22

23

---

<sup>304</sup> The applicant prepares the document, and so therefore has the responsibility to incorporate the comments and responses into the document.

<sup>305</sup> Clarifies that the comments are incorporated into the final EA.

<sup>306</sup> Housekeeping.

<sup>307</sup> Housekeeping.

<sup>308</sup> Ensures that each individual who submits a comment, even when it is in the form of a pre-printed postcard or letter that may be grouped with other identical or very similar comments, can verify that the individual's comment was received and responded to.

<sup>309</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments.

<sup>310</sup> Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>311</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

<sup>312</sup> Housekeeping. (v0.1 omitted strikethrough)

## #081

Posted by **Anonymous** on **10/02/2017** at **2:12am**

Comment

Responding in writing to the COMMENTOR has been misunderstood by one consultant who replied only in the FEA/FONSI and NOT PRIOR to the FEA being published in the 10.23.2015 OEQC (see Hotel Coral Reef 3rd Story Addition, Kapaa - State Lease S-3832 & S-5578.

Agree: 0, Disagree: 0

## #082

Posted by **Anonymous** on **10/18/2017** at **8:12pm**

For clarity, revise to read "include the name of each commentor..."

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements**Proposed §11-200-XX Environmental Assessment Style**

(a) In developing the draft and final EA, proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the EA. The scope of the EA may vary with the scope of the proposed action and its impact. Data and analyses in an EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. An EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the EA, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EA may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project over a large geographic area. An EA for these types of actions may be broader and more general than an EA for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. Analysis may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EA and that are proposed to be carried out in conformance with the conditions and mitigation measures presented in the EA may require no or limited further review.<sup>313</sup>

<sup>313</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.

## #083

Posted by **Anonymous** on **10/18/2017** at **8:14pm**  
should be "broader and more conceptual"

Agree: 0, Disagree: 0

## #084

Posted by **Anonymous** on **10/09/2017** at **5:13pm**  
Comment

When an effect requires mitigation, and the project does not implement the mitigation the Rules should provide for a tax or fee imposed on the project to promote following through with mitigation.

Agree: 0, Disagree: 0

## #085

Posted by **Anonymous** on **10/18/2017** at **8:13pm**  
Delete "more broad," replace with "broader."

Agree: 0, Disagree: 0

## #086

Posted by **Anonymous** on **10/18/2017** at **10:13pm**  
Comment

If data and analyses form the basis of claims in the EA, that data and analyses must be publicly available and accessible.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (c) In preparing any EA, care shall be taken to concentrate on important issues and to  
2 ensure that the EA remains an essentially self-contained document, capable of being  
3 understood by the reader without the need for undue cross-reference.<sup>314</sup>  
4

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

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<sup>314</sup> Mirrors subsection (c) in section 11-200-19, Environmental Impact Style.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-10 Contents of an Environmental Assessment**

2 The proposing agency or ~~approving agency~~ applicant<sup>315</sup> shall prepare ~~any a~~<sup>316</sup> draft or final  
3 environmental assessment EA of each ~~proposed for any~~<sup>317</sup> action ~~not exempt under section 11-~~  
4 ~~200-8~~<sup>318</sup> and determine whether the anticipated effects constitute a significant effect in the  
5 context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall  
6 contain, but not be limited to, the following information:

- 7 (1) Identification of applicant or proposing agency;
- 8 (2) Identification of approving agency, if applicable;
- 9 (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~  
10 ~~preparing~~<sup>319</sup> the assessment;
- 11 (4) General description of the action's technical, economic, social, cultural<sup>320</sup> and  
12 environmental characteristics;
- 13 (5) Summary description of the affected environment, including suitable and  
14 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
15 Floodway Boundary Maps, or United States Geological Survey topographic  
16 maps;
- 17 (6) Identification and ~~summary analysis~~<sup>321</sup> of impacts and alternatives considered;
- 18 (7) Proposed mitigation measures;
- 19 (8) ~~Agency determination or, for final EAs, or draft environmental assessments EAs~~  
20 ~~only, an anticipated determination~~ ~~for draft EAs~~<sup>322</sup>;
- 21 (9) Findings and reasons supporting the agency determination or anticipated  
22 determination;
- 23 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be  
24 prepared;
- 25 (11) List of all required<sup>323</sup> permits and approvals (State, federal, county) ~~required and~~  
26 ~~identification of which are considered to be discretionary~~<sup>324</sup>; and

315 Removes "approving agency" and replaces with "applicant" because an applicant, rather than an agency, is the one who will prepare the EA.

316 Housekeeping.

317 Stylistic change.

318 Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.

319 Uses more accurate time consistent with language in the rules. Uses more accurate language ("preparing" rather than "making") that is consistent with language in the rules.

320 Aligns provision with content requirement of a draft EIS under section 11-200-17(e).

321 Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a ~~detailed~~ discussion ~~detailed enough~~ ~~sufficient~~ to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argume<sup>087</sup>.

322 Stylistic change to improve clarity.

323 Housekeeping. Moves the word required from the end of the clause to before the word "permits".

324 Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

## #087

Posted by **Anonymous** on **10/18/2017** at **8:16pm**

Good change.

Agree: 0, Disagree: 0

## #088

Posted by **Naaupo** on **09/15/2017** at **7:04pm**

Question

Since applicants now prepare EAs, should this not be edited to reflect this, by deleting this as content requirement?

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (12) Written comments and responses to the comments ~~under~~ received pursuant  
2 to<sup>325</sup>the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1),  
3 or 11-200-15, and statutorily prescribed public review periods.  
4

5 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),  
6 343-6)  
7

8  
9  
10  
11  
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13

14 **§11-200-11 REPEALED.**

15 [R AUG 31 1996]  
16  
17  
18

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<sup>325</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-11.1 Notice of Determination for Draft**  
2 **Environmental Assessments**

3 (a) After:<sup>326</sup>  
4 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>327</sup> ~~an environmental assessment~~  
5 ~~a draft EA, and~~<sup>328</sup>  
6 (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>329</sup>  
7 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
8 if the proposing agency or the approving agency anticipates that the proposed action is  
9 not likely to have a significant effect, ~~if the proposing agency or approving agency~~<sup>330</sup>  
10 shall issue a notice of ~~determination~~<sup>331</sup> ~~which that shall be~~<sup>332</sup> ~~an anticipated negative~~  
11 ~~declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.

12  
13 (b)<sup>333</sup> The proposing agency or approving agency shall ~~also file such the~~<sup>334</sup> notice and  
14 supporting draft EA<sup>335</sup> with the office as early as possible after the determination is made  
15 pursuant to and in accordance with section 11-200-9,<sup>336</sup> and the requirements in  
16 subsection (e)<sup>337</sup> ~~along with four copies of the supporting environmental assessment~~<sup>338</sup>.  
17 ~~In addition to the above, the anticipated negative declaration determination for any~~  
18 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~  
19 ~~applicant actions, the approving agency shall also send the anticipated FONSI to the~~  
20 ~~applicant.~~<sup>339</sup>

21  
22 (b)~~c~~ The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
23 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
24 of receipt by the office in accordance with section 11-200-3.

<sup>326</sup> Housekeeping. Breaks out three conditions into ~~3~~ three items and capitalizes each of the numbered items to make the language clearer.

<sup>327</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>328</sup> Housekeeping. Specifies draft EA.

<sup>329</sup> Housekeeping.

<sup>330</sup> Housekeeping.

<sup>331</sup> Removes redundant language. An anticipated FONSI is defined as a "determination".

<sup>332</sup> Removes redundant language.

<sup>333</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>334</sup> Housekeeping.

<sup>335</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>336</sup> Housekeeping.

<sup>337</sup> Housekeeping.

<sup>338</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>339</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

## #089

Posted by **Anonymous** on **10/19/2017** at **7:36pm**

The text here specifies that the applicant shall respond in writing to all comments received... However footnote 309 indicates that it is not necessary to send an individual response letter to each person who comments (for identical/similar comments). This concept does not seem to be adequately clear in the rule revision.

Agree: 0, Disagree: 0

Reply by **Anonymous** on **10/19/2017** at **7:37pm**

Sorry, this comment is meant to show up on page 39.

Agree: 0, Disagree: 0

## #090

Posted by **Anonymous** on **10/19/2017** at **7:38pm**

Final EA?

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (ed) The notice of an anticipated FONSI determination shall **indicate include** in a concise
- 2 manner:
- 3 (1) Identification of the<sup>340</sup> **applicant or** proposing agency **or applicant**<sup>341</sup>;
- 4 (2) Identification of the approving agency or<sup>342</sup> accepting authority;
- 5 (3) **Brief A brief**<sup>343</sup> description of the<sup>344</sup> **proposed** action;
- 6 (4) ~~Determination~~ The determination anticipated FONSI<sup>345</sup>;
- 7 (5) Reasons supporting the<sup>346</sup> **anticipated FONSI determination**; and
- 8 (6) ~~Name~~ The name<sup>347</sup>, title, contact information, including the email address,
- 9 physical<sup>348</sup> address, and phone number of **a contact person an individual**
- 10 **representative of the proposing agency or applicant who may be contacted** for
- 11 further inform<sup>091</sup>on.<sup>349</sup>
- 12
- 13 (de) When an agency withdraws a document, determination, or both<sup>350</sup> pursuant to ~~its~~ the
- 14 agency's<sup>351</sup> rules, the agency shall submit to the office a written letter informing the office
- 15 of ~~its the~~<sup>352</sup> withdrawal **and the rationale for the withdrawal**<sup>353</sup>. The office shall publish
- 16 notice of agency withdrawals in accordance with section 11-200-3.
- 17
- 18 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
- 19

<sup>340</sup> Housekeeping.

<sup>341</sup> **Parallels similar sentences in the regulations that reference the "proposing agency" first and the "applicant" second.**

<sup>342</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>343</sup> Housekeeping.

<sup>344</sup> Housekeeping.

<sup>345</sup> Housekeeping.

<sup>346</sup> Housekeeping.

<sup>347</sup> Housekeeping.

<sup>348</sup> **includes Modernizes the requirements to include** email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>349</sup> **Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requireme**<sup>092</sup>

<sup>350</sup> Clarifies that an agency may withdraw a document (i.e., FEA) **as well as being able to and may** withdraw a determination (i.e., EISPN or FONSI).

<sup>351</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

<sup>352</sup> Housekeeping.

<sup>353</sup> **Clarifies that agencies should support the withdrawal notice to the office with a rationale.**

## #091

Posted by **Anonymous** on **10/18/2017** at **10:15pm**  
Comment

And who is qualified to answer questions or knowledgeable of who can and their contact info.

Agree: 0, Disagree: 0

## #092

Posted by **Anonymous** on **10/18/2017** at **9:44pm**  
good change

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-11.2 Notice of Determination for Final  
Environmental Assessments**

- (a) After:<sup>354</sup>
  - (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>355</sup> a final environmental assessment EA,
  - (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>356</sup>
  - (3) ~~applying~~ Applying the significance criteria in section 11-200-12,

the proposing agency or the approving agency shall issue ~~one of the following notices a~~  
~~notice~~<sup>357</sup> of determination for<sup>358</sup> an EISPN or FONSI<sup>359</sup> in accordance with section 11-  
200-9(a) or 11-200-9(b), and file the notice with the office ~~addressing the requirements in~~  
~~subsection (c), along with four copies of the supporting final environmental~~  
~~assessment,~~<sup>360</sup> provided that in addition to the above, all notices of determination for  
~~any applicant action shall be mailed to the requesting applicant by the approving~~  
~~agency.~~<sup>361</sup>
- (4)<sup>362</sup> ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or  
approving agency determines that a proposed action may have a significant effect, it  
shall issue a notice of determination ~~which that~~ shall be an environmental impact  
~~statement preparation notice~~ EISPN and such notice shall be filed as early as possible  
~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>363</sup>.
- (2)~~c~~ ~~Negative declaration~~ FONSI. If the proposing agency or approving agency determines  
that a proposed action is not likely to have a significant effect, it shall issue a notice of  
determination ~~which that~~<sup>364</sup> shall be a negative declaration FONSI, ~~and the proposing~~  
~~agency or approving agency shall file such notice with the office as early as possible~~  
~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>365</sup>.

<sup>354</sup> Housekeeping. Breaks out three conditions into 3 three items and capitalizes each of the numbered items to make the language clearer.

<sup>355</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>356</sup> Housekeeping.

<sup>357</sup> Housekeeping.

<sup>358</sup> Removes redundant language. A FONSI and EISPN are by definition "determinations".

<sup>359</sup> Clarifies which of two determinations is to be issued.

<sup>360</sup> Removes unnecessary language on final EA filing requirements.

<sup>361</sup> This requirement is now addressed in the new proposed paragraph D.

<sup>362</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>363</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

<sup>364</sup> Housekeeping.

<sup>365</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (d) The proposing agency or approving agency shall file the notice and the supporting final
- 2 EA with the office as early as possible after the determination is made in accordance
- 3 with section 11-200-9, addressing<sup>366</sup> the requirements in subsection (f).<sup>367</sup> For applicant
- 4 actions, the approving agency shall send the notice of determination for an EISPN or
- 5 FONSI to the applicant.<sup>368</sup>
- 6
- 7 (be) The office shall publish the appropriate notice of determination in the periodic bulletin
- 8 following receipt of the documents in subsection (a) by the office in accordance with
- 9 section 11-200-3.
- 10
- 11 (ef) The notice of determination for a FONSI<sup>369</sup> shall indicate in a concise manner:
- 12 (1) Identification of the<sup>370</sup> applicant or proposing agency;
- 13 (2) Identification of the approving agency or<sup>371</sup> accepting authority;
- 14 (3) ~~Brief~~ A brief<sup>372</sup> description of the<sup>373</sup> proposed action;
- 15 (4) ~~Determination~~ The determination<sup>374</sup>;
- 16 (5) Reasons supporting the<sup>375</sup> determination; and
- 17 (6) ~~Name~~ The name<sup>376</sup>, title, contact information, including the email address,
- 18 physical<sup>377</sup> address, and phone number of a contact person an individual
- 19 representative of the proposing agency or applicant who<sup>378</sup> be contacted for
- 20 further information.<sup>378/379</sup>

<sup>366</sup> Housekeeping. (v0.1 omitted underlining)

<sup>367</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>368</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>369</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.

<sup>370</sup> Housekeeping.

<sup>371</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>372</sup> Housekeeping.

<sup>373</sup> Housekeeping.

<sup>374</sup> Housekeeping.

<sup>375</sup> Housekeeping.

<sup>376</sup> Housekeeping.

<sup>377</sup> Modernizes the requirements to includes include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>378</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>379</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

## #093

Posted by **Anonymous** on **10/18/2017** at **9:45pm**

Here and above, it might be useful to add that the representative must be qualified to answer questions or knowledgeable of who can and how to contact them.

Agree: 0, Disagree: 0

Reply by **Anonymous** on **10/18/2017** at **9:46pm**

Add this into the text of the regulation with language similar to what's in the footnote.

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1           The notice of determination for an EISPN shall be prepared pursuant to section 11-200-  
2           15.<sup>380</sup>

3  
4   (dg)   When an agency withdraws a document, determination, or both<sup>381</sup> pursuant to ~~its~~ the  
5           agency's<sup>382</sup> rules, the agency shall submit to the office a written letter informing the office  
6           of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
7           with section 11-200-3.

8  
9   [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

10  
11  
12

---

<sup>380</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

<sup>381</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

<sup>382</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-12 Significance Criteria**

- (a) In considering the significance of potential environmental effects, agencies shall consider the <sup>103</sup>of effects on the quality of the <sup>098</sup>environment,<sup>383</sup> and shall evaluate the overall and cumulative effects of an action.
- (b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected consequences, both primary and second<sup>102</sup>, and the cumulative as well as the short-term and<sup>094</sup> long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if **it is likely to**<sup>384</sup>:
  - (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or cultural resource~~ Irrevocably **commits** ~~commit~~<sup>385</sup> a natural **or cultural**<sup>386</sup> resource<sup>387</sup>;
  - (2) **Curtails** ~~Curtail~~ the range of beneficial uses of the environment;
  - (3) **Conflicts** ~~Conflict~~ with the <sup>101</sup>te's long-term environmental policies or **long-term environmental**<sup>388</sup> goals and guidelines as expressed in chapter 344, HRS, **or other laws**,<sup>389</sup> and any revisions thereof and amendments thereto, court decisions, or executive orde<sup>100</sup>
  - (4) **Substantially Adversely**<sup>390</sup> ~~affects~~ **Have a substantial adverse effect on**<sup>391</sup> the economic ~~welfare, or social welfare, or cultural~~ **practices**<sup>392</sup> of the community or State;
  - (5) **Substantially affects** ~~Have a substantial adverse effect on~~<sup>393</sup> public health;

<sup>383</sup> Housekeeping<sup>104</sup>

<sup>384</sup> While section <sup>104</sup> of chapter 345, HRS, provides that an EIS is required for an action that "may" have a significant effect, the Supreme Court of Hawaii has interpreted the word "may" to mean "likely". For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will "likely" have a significant effect on the environment.

<sup>385</sup> Housekeeping. (Makes each item read grammatically from the revised lead in language "is likely to") and revises language to match the definition of "significant effect" in Section 343-2, HRS.

<sup>386</sup> Reinserts language regarding loss or destruction of cultural resources.

<sup>387</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

<sup>388</sup> Revises language to match the definition of "significance **significant effect**" in Section 343-2, HRS.

<sup>389</sup> Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>390</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>391</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse **impacts** in the definition of "significant effect" in section 343-2, HRS.

<sup>392</sup> Revises language to match the definition of "significance" in ~~Section~~ **section** 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.

<sup>393</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse **impacts** in the definition of "significant effect" in section 343-2, HRS.

## #094

Posted by **Anonymous** on **10/10/2017** at **2:32am**

Is there a plan to deal with any unintended or unanticipated effects that happen?

Agree: 0, Disagree: 0

## #095

Posted by **Anonymous** on **10/09/2017** at **6:32pm**

Question

Whose cultural practices and are all weighted equally regardless of origin, number of practitioners, etc?

Agree: 0, Disagree: 0

## #096

Posted by **Anonymous** on **10/10/2017** at **2:29am**

Question

Will "substantial adverse effect" encompass public health issues already affecting the location, meaning that the EA/EIS will have to address how proposed projects perpetuate/reduce already existing adverse effects?

Agree: 0, Disagree: 0

## #097

Posted by **Anonymous** on **10/10/2017** at **2:29am**

If there is an opportunity to identify an ambition toward a thriving environment as the "quality" marker, that might be worthwhile.

Agree: 0, Disagree: 0

## #098

Posted by **Anonymous** on **10/10/2017** at **2:28am**

Comment

Awesome job guys! Looks great!!

Agree: 0, Disagree: 0

## #099

Posted by **Anonymous** on **10/02/2017** at **2:14am**

Comment

replace "commit" with HARM, (or destroy). The definition of "commit" does not comport with the intent of this statement.

Agree: 0, Disagree: 0

## #100

Posted by **Anonymous** on **10/18/2017** at **10:20pm**  
Comment

What about County environmental goals, guidelines, etc?  
Agree: 0, Disagree: 0

## #101

Posted by **Anonymous** on **10/10/2017** at **2:30am**

Capitalize "State"  
Agree: 0, Disagree: 0

## #102

Posted by **Anonymous** on **10/10/2017** at **2:29am**

Question  
What constitutes a secondary consequence? How would one a "secondary consequence" have its relationship to a project determined?  
Agree: 0, Disagree: 0

## #103

Posted by **Anonymous** on **10/10/2017** at **2:28am**

Comment  
consider changing "sum" to "totality"  
Agree: 0, Disagree: 0

## #104

Posted by **Anonymous** on **10/10/2017** at **2:32am**

Comment  
House keeping meaning is unclear  
Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (6) ~~Involves~~ **Involve** secondary ~~adverse~~<sup>394</sup> impacts, such as population changes or
- 2 effects on public facilities<sup>109</sup>
- 3 (7) ~~Involves~~ **Involve** a substantial degradation of environmental qua<sup>106</sup>
- 4 (8) Is individually limited but cumulatively has ~~considerable~~ **substantial adverse**<sup>395</sup>
- 5 effect upon the environment or involves a commitment for larger actions<sup>105</sup>
- 6 (9) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>396</sup> a rare, threatened,
- 7 or endangered species, or its habitat;
- 8 (10) ~~Detrimentially affects~~ **Have a substantial adverse effect on**<sup>397</sup> air or water quality
- 9 or ambient noise levels;
- 10 (11) ~~Affects~~ **Have a substantial advers**<sup>108</sup>**effect on**<sup>398</sup> or is likely to suffer damage by
- 11 being located in an environmentally sensitive area such as a flood plain, tsunami
- 12 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh
- 13 water, or coastal waters;
- 14 (12) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>399</sup> scenic vistas and
- 15 viewplanes identified in county or state plans or studies; or,
- 16 (13) ~~Requires~~ **Require** substantial energy consumptic<sup>107</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)

20

<sup>394</sup> Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>395</sup> Retains the focus on "considerable effects" through the synonym "substantial effects" and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>396</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>397</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS and maintains uniformity with the threshold of "substantially adverse" used in this section.

<sup>398</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>399</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

## #105

Posted by **Anonymous** on **10/10/2017** at **2:32am**

Comment

The ending of item number 8 is syntactically ambiguous. Consider adding more conclusory/definitive language.

Agree: 0, Disagree: 0

## #106

Posted by **Anonymous** on **10/18/2017** at **10:21pm**

Comment

Shouldn't this be first in this list?

Agree: 0, Disagree: 0

## #107

Posted by **Anonymous** on **10/18/2017** at **10:23pm**

Comment

Add "Require substantial water consumption." Water uses are important environmental, social, and cultural concerns.

Agree: 0, Disagree: 0

## #108

Posted by **Anonymous** on **10/09/2017** at **5:12pm**

Question

What is the reason for adding "substantially" here?

Agree: 0, Disagree: 0

## #109

Posted by **Anonymous** on **10/02/2017** at **2:15am**

Comment

ADD: "and public infrastructure."

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-13 Consideration of Previous Determinations and Accepted Statements**

- (a) Chapter 343, HRS, provides that whenever <sup>400</sup> an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether ~~a statement~~ an EIS is required, such as exemption notices, FONISs, and EISPNs, EAs, <sup>401</sup> and previously accepted statements EIS EISs <sup>402</sup>.
- (b) Previous determinations, EAs, <sup>403</sup> and previously accepted statements EISs may be incorporated into an exemption notice, EA, EISPN, or EIS, by ~~applicants and~~ agencies and applicants <sup>404</sup> whenever the information contained therein is pertinent to the decision at hand <sup>405</sup> and has logical relevancy and bearing to the proposed action being considered <sup>406</sup>.
- (c) Agencies and applicants <sup>407</sup> shall not, without considerable pre-examination and comparison, use past determinations, EAs, <sup>408</sup> and previous previously accepted <sup>409</sup> statement EISs to apply to the action at hand. The proposed action for which a determination is sought <sup>410</sup> shall be thoroughly reviewed prior to the use of previous determinations, EAs, <sup>411</sup> and previously accepted statements EISs. Further, when previous determinations, EAs, <sup>412</sup> and previous statements EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered <sup>413</sup>.

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

---

<sup>400</sup> Removes the reference to chapter 343, HRS, so that the sentence is easier to read.

<sup>401</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>402</sup> Housekeeping.

<sup>403</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>404</sup> Housekeeping (word order).

<sup>405</sup> Removes unnecessary language and increases readability.

<sup>406</sup> Removes unnecessary language and clarifies that the action referenced is the proposed action.

<sup>407</sup> Clarifies that this subsection also applies to applicants preparing EISs.

<sup>408</sup> Clarifies that previously completed EAs may also be considered.

<sup>409</sup> Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.

<sup>410</sup> Removes unnecessary language and increases readability.

<sup>411</sup> Clarifies that previously completed EAs may also be considered.

<sup>412</sup> Clarifies that previously completed EAs may also be considered.

<sup>413</sup> Removes unnecessary language and increases readability.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 **§11-200-14 General Provisions**

3 (a)<sup>414</sup> Chapter 343, HRS, directs that in both agency and applicant actions where statements  
4 EISs are required, the proposing agency or applicant<sup>415</sup> preparing party shall prepare the  
5 EIS, submit it for review and comments, and revise it, taking into account all critiques  
6 and responses. Consequently, the EIS process involves more than the preparation of a  
7 document; it involves the entire process of research, discussion, preparation of a  
8 statement, and review. The EIS process shall involve at a minimum:

- 9 (1)<sup>416</sup> ~~identifying~~ Identifying environmental concerns,
- 10 (2) Conducting no fewer than one<sup>417</sup> EIS public scoping meeting<sup>417</sup> in the area<sup>110</sup>  
11 affected by<sup>112</sup> the proposed action,<sup>418</sup>
- 12 (3) ~~obtaining~~ Obtaining various relevant data,
- 13 (4) ~~conducting~~ Conducting necessary studies,
- 14 (5) ~~receiving~~ Receiving public and agency input,
- 15 (6) ~~evaluating~~ Evaluating alternatives, and
- 16 (7) ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing  
17 adverse impacts.

18 (b) To encourage early thorough and informed review of the EIS, the office shall develop a  
19 distribution list of persons and agencies with jurisdiction or expertise in certain areas  
20 relevant to various actions and make it available to the proposing agency or applicant.<sup>419</sup>

21  
22 ~~An EIS is meaningless without the conscientious application of the EIS process as a whole, and~~  
23 ~~shall not be merely a self-serving recitation of benefits and a rationalization of the proposed~~  
24 ~~action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in~~  
25 ~~the planning and decision-making process. This shall assure an early open forum for discussion~~  
26 ~~of adverse effects and available alternatives, and that the decision-makers will be enlightened to~~  
27 ~~any environmental consequences of the proposed action prior to decision making~~<sup>420, 421</sup>

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

414 Housekeeping to reflect insertion of a second paragraph, now subsection (b), in this section.

415 Clarifies that the proposing agency or the applicant must perform the following actions.

416 Housekeeping. Breaks the paragraph up and helps to see clarify the minimum elements of the EIS process. Renumbers paragraphs based on addition of public scoping meeting.

417 Requires at least one public scoping meeting for an EIS.

418 Specifies where the scoping meeting must be held.

419 Inserts and modifies a provision from section 11-200-21, Distribution, that is proposed to be deleted. This provision was the only meaningful provision remaining in section 11-200-21 after the incorporation of other edits to the section. Distribution lists should, at a minimum, be used for the distribution of the draft and final EIS, and may be referred to for consultation with knowledgeable persons and agencies throughout the environmental review process.

420 Emphasizes that the EIS process is to occur before committing to a particular course of action.

421 Moved to section 11-200-1, Purpose, to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.



## #110

Posted by **Anonymous** on **09/20/2017** at **2:18pm**

### Question

Please clarify area. Does it mean meet with the community of the affected area?

Agree: 0, Disagree: 0

## #111

Posted by **Anonymous** on **10/18/2017** at **10:35pm**

### Comment

If an action will have significant effects, one public meeting is egregiously inadequate, particularly if travel to that meeting is expensive or difficult for stakeholders. This provision does not provide a sufficient opportunity for public input to promote responsible decision-making.

Agree: 0, Disagree: 0

## #112

Posted by **Anonymous** on **10/18/2017** at **10:31pm**

### Comment

"area affected by" is vague and leaves much wiggle-room. An incinerator on the other side of the island from where I live affects me and future generations by spewing GHGs into the atmosphere so I would consider myself to be in the "area affected," but the persons proposing the incinerator do not and have not held stakeholder meetings near my location. I recommend additional thought go into what is meant here and providing further specificity.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

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

- (a)<sup>422</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS without first requiring an EA, shall indicate in a concise manner:
- (1) Identification of the proposing agency or applicant;
  - (2) Identification of the accepting authority;
  - (3) The determination **to prepare an EIS**<sup>423</sup>;
  - (4) Reasons supporting the determination **to prepare an EIS**<sup>424</sup>;
  - (5) A description of the proposed action and its location<sup>113</sup>;
  - (6) A description of the affected environment and include regional, location, and site maps;
  - (7) Possible alternatives to the proposed action;
  - (8) The proposing agency's or applicant's proposed scoping process, including when and where the EIS public scoping meeting or meetings will be held;
  - (9) The name, title, contact information, including the email address, physical address, and phone number of **a contact person an individual representative of the proposing agency or applicant who may be contacted** for further information.<sup>425/426</sup>
- (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>427</sup> citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft<sup>428</sup> EIS prior to the time the draft<sup>429</sup> EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. ~~At the discretion of the proposing agency or an applicant, a~~ A public scoping meeting ~~to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth~~ addressing the scope of the draft EIS ~~may~~ shall<sup>430</sup> be held within the thirty-day public review and comment period in subsection

<sup>422</sup> Creates a new paragraph and renumbers subsequent paragraphs.

<sup>423</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>424</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>425</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>426</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

<sup>427</sup> Housekeeping.

<sup>428</sup> Clarifies that the document is a draft EIS.

<sup>429</sup> Clarifies that the document is a draft EIS.

<sup>430</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

## #113

Posted by **Anonymous** on **10/02/2017** at **1:41am**  
Comment

Recommend the Ahupuaa be included too.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (bc),<sup>431</sup> provided that the proposing agency or applicant shall treat oral and written  
 2 comments received at such a meeting as indicated in subsection (d)<sup>432</sup>.  
 3  
 4 (bc) Upon publication of a preparation notice an EISPN in the periodic bulletin, agencies,  
 5 groups, or individuals shall have a period of thirty day<sup>114</sup>om the initial issue  
 6 publication<sup>433</sup> date in which to request to become a consulted party and<sup>434</sup> to make  
 7 written comments regarding the environmental effects of the proposed action. Upon  
 8 written request by the consulted party and upon good cause shown, With good cause,  
 9 the approving agency or accepting authority may extend the period for comments for a  
 10 period not to exceed thirty additional<sup>435</sup> days.<sup>436</sup>  
 11  
 12 (cd) Upon receipt of the request, the proposing agency or applicant shall provide the  
 13 consulted party with a copy of the environmental assessment or requested portions  
 14 thereof and<sup>437</sup> the environmental impact statement preparation notice EISPN.  
 15 Additionally, the proposing agency or applicant may provide any other information it  
 16 deems necessary. The proposing agency or applicant may also contact other agencies,  
 17 groups, or individuals which it feels may provide pertinent additional information.<sup>438</sup>  
 18  
 19 (de) Any substantive<sup>115</sup><sup>9</sup> written<sup>440</sup> comments received by the proposing agency or applicant  
 20 pursuant to this section shall be responded to in writing and as appropriate, incorporated  
 21 into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS

<sup>431</sup> Housekeeping.

<sup>432</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer's interpretation recording of individual oral comments.

<sup>433</sup> Clarifies that thirty-day time period begins upon publication of the EISPN.

<sup>434</sup> Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

<sup>435</sup> Clarifies that the days are in addition to the first thirty-day period.

<sup>436</sup> Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period.

<sup>437</sup> Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.

<sup>438</sup> All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.

<sup>439</sup> Removes threshold of "substantive" and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.

<sup>440</sup> Adds written as a requirement for being responded to and reproduced in the draft EIS.

## #114

Posted by **Anonymous** on **10/18/2017** at **10:37pm**

Comment

Clarify whether it's working or calendar days. Recommend working days.

Agree: 0, Disagree: 0

## #115

Posted by **G70** on **10/20/2017** at **10:26pm**


Disagree with change. The ability to address only substantive comments allows focus on the salient issues of the environmental analysis. Responses to irrelevant comments adds a burden of time and expense to the disclosure process that does not improve the analysis.




Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 with the approving agency or accepting authority. Letters submitted **which that** contain  
 2 no comments on the project but only serve to acknowledge receipt of the document do  
 3 not require a written response. Acknowledgement of receipt of these items must be  
 4 included in the ~~final environmental assessment or~~<sup>441</sup> **final statement draft EIS**<sup>442</sup>. **If a**  
 5 **number of written comments are identical or very similar, the proposing agency or**  
 6 **applicant may group the comments and prepare a single standard response for each**  
 7 **group. The name of each commentor shall be included with the grouped response. One**  
 8 **representative copy of identical or very similar comments may be included rather than**  
 9 **reproducing each comment.**<sup>443</sup> 

10  
 11 **(f) A written summary of oral**<sup>444</sup> **comments made at any EIS public scoping meetings**<sup>445</sup>  
 12 **identifying those persons or agencies that provided oral comments shall be included in**  
 13 **the draft EIS prior to the filing of the draft EIS with the approving agency or accepting**  
 14 **authority.**<sup>446/ 447</sup>   

15  
 16 **(g) A list of those persons or agencies who were consulted with prior to filing the draft EIS**  
 17 **and had no comment shall be included in the draft EIS in a manner indicating that no**  
 18 **comment was provided.**<sup>448</sup>

19  
 20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
 21

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<sup>441</sup> Removes final EA requirement because a final EA may not have been prepared.

<sup>442</sup> Replaces final EIS with draft EIS, mirroring the previous sentence.

<sup>443</sup> Mirrors language inserted regarding written comments in Section 11-200-17(p) addressing voluminous and repetitive comments.

<sup>444</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>445</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).

<sup>446</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>447</sup> Addresses how proposing agencies and applicants should include oral comments received during the public scoping meeting required under this section into the draft EIS. This language mirrors the way oral comments received on the Draft EIS are to be included in Final EIS.

<sup>448</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

## #116

Posted by **Anonymous** on **09/20/2017** at **2:53pm**  
Comment

For written comments provided during the scoping meeting, they shall be included and have a response in the draft EIS.

Agree: 0, Disagree: 0

## #117

Posted by **Anonymous** on **09/20/2017** at **2:25pm**  
Comment

Each individual comment should be included in the draft EIS, but a general response to all similar comments would be sufficient. Including all comments will leave out less confusion and individuals are less likely to feel ignored and demand their specific comment included in the draft.

Agree: 0, Disagree: 0

## #118

Posted by **Anonymous** on **09/20/2017** at **2:28pm**  
Comment

Sign-in sheet shall be included in the EIS for all meetings.

Agree: 0, Disagree: 0

## #119

Posted by **Anonymous** on **09/20/2017** at **2:27pm**  
Comment

A sign-in sheet shall be mandatory identifying individuals first and last name. All other personal information should be redacted.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **§11-200-16 Content Requirements**

2 ~~For draft Draft~~ and final EISs, ~~The environmental impact statement the document~~<sup>449</sup> shall  
3 contain an explanation of the environmental consequences of the proposed action, ~~pursuant to~~  
4 as required in section 11-200-17<sup>450</sup>. The contents shall fully declare the environmental  
5 implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably  
6 foreseeable<sup>451</sup> consequences of the action. In order that the public can be fully informed and  
7 that the agency can make a sound decision based upon the full range of responsible opinion on  
8 environmental effects, ~~a statement~~ an EIS shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.

10  
11 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
12 343-6)

13  
14  
15

---

<sup>449</sup> Clarifies that Section section 11-200-16 applies to both draft and final EISs.

<sup>450</sup> Explicitly connects section 11-200-16 and section 11-200-17.

<sup>451</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.



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Environmental Council

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

1 **§11-200-17 Content Requirements; Draft Environmental**  
2 **Impact Statement**

3 (a) The draft EIS, at a minimum, shall contain the information required in this section.

4  
5 (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the  
6 following:

7 (1) Brief description of the action;  
8 (2) Significant beneficial and adverse <sup>120</sup> impacts (including cumulative impacts and  
9 secondary impacts);

10 (3) Proposed mitigation measures;

11 <sup>121</sup> (4) Alternatives considered;

12 (5) Unresolved issues; ~~and~~

13 (6) Compatibility with land use plans and policies, and listing of permits or  
14 approvals; ~~and~~<sup>452</sup>

15 (7) A list of relevant documents, including EAs and EISs, used to identify potential  
16 segmentation or cumulative impacts.<sup>453</sup>

17  
18 (c) The draft EIS shall contain a table of contents.

19  
20 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~  
21 the<sup>454</sup> purpose and need for the proposed action.

22  
23 (e) The draft EIS shall contain a program or<sup>455</sup> project description which that shall include  
24 the following information, but need not supply extensive detail beyond that needed for  
25 evaluation and review of the environmental impact:

26 (1) A detailed map (preferably a United States Geological Survey topographic map,  
27 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a  
28 related regional map;

29 (2) ~~Statement of objectives~~ Objectives of the proposed action<sup>456</sup>;

30 (3) General description of the action's technical, economic, social, cultural,<sup>457</sup> and  
31 environmental characteristics;

<sup>452</sup> Housekeeping.

<sup>453</sup> This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.

<sup>454</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>455</sup> Clarifies that the proposed action could be either a program or a project.

<sup>456</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>457</sup> Adds "cultural" to the characteristics, in line with Act 50 (2000).

## #120

Posted by **Zack** on **10/11/2017** at **5:55pm**  
Comment

Agree: 0, Disagree: 0

## #121

Posted by **Anonymous** on **10/09/2017** at **5:12pm**  
Comment

I would like to see that \*MEANINGFUL\* alternatives are considered. So often the EIS looks at alternatives which are known from the start to be impossible or undesirable. The alternatives considered should be viable and considerably different from the proposed action.

Agree: 0, Disagree: 0

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Environmental Council

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

- 1 (4) Use of **public state or county**<sup>458</sup> funds or lands for the action;
- 2 (5) Phasing and timing of **the**<sup>459</sup> action;
- 3 (6) Summary **of** technical data, diagrams, and other information necessary to permit
- 4 an evaluation of potential environmental impact by commenting agencies and the
- 5 public; and
- 6 (7) Historic perspective.

7

8 (f) The draft EIS shall describe in a separate and distinct section **reasonable**<sup>460</sup>

9 alternatives ~~which that~~ could attain the objectives of the action ~~regardless of cost, in~~

10 ~~sufficient detail to explain why they were rejected~~<sup>461</sup> ~~and,~~<sup>462</sup> ~~for alternatives that were~~

11 ~~eliminated from detailed study, a~~ **briefly discussion of the reasons for eliminating**

12 ~~them~~<sup>463</sup>.<sup>464</sup> The section shall include a rigorous exploration and objective evaluation of

13 the environmental impacts of all such alternative actions.<sup>465</sup> Particular attention shall be

14 given to alternatives that might enhance environmental quality or avoid, reduce, or

15 minimize some or all of the adverse environmental effects, costs, and risks **of the**

16 **action**<sup>466</sup>. Examples of alternatives include:

- 17 (1) The alternative of no action;
- 18 (2) Alternatives requiring actions of a significantly different nature ~~which that~~ would
- 19 provide similar benefits with different environmental impacts;
- 20 (3) Alternatives related to different designs or details of the proposed actions ~~which~~
- 21 ~~that~~ would present different environmental impacts;
- 22 (4) The alternative of postponing action pending further study; and,
- 23 (5) Alternative locations for the proposed **project action**<sup>467</sup>.

24 In each case, the analysis shall be sufficiently detailed to allow the comparative

25 evaluation of the environmental benefits, costs, and risks of the proposed action and

26 each reasonable alternative. **For alternatives that were eliminated from detailed study,**

27 **the section shall contain a brief discussion of the reasons for not studying those**

<sup>458</sup> **Aligns language with section 11-200-12.**

<sup>459</sup> **Housekeeping.**

<sup>460</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>461</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>462</sup> **Housekeeping.**

<sup>463</sup> ~~Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.~~

<sup>464</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>465</sup> Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.

<sup>466</sup> **Clarifies that the effects, costs, and risks are related to the action.**

<sup>467</sup> **Clarifies that alternative locations should be included for both programs and projects.**

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

- 1 **alternatives in detail.**<sup>468</sup> For any agency actions, the discussion of alternatives shall  
2 include, where relevant, those alternatives not within the existing authority of the agency.  
3
- 4 (g) The draft EIS shall include a description of the environmental setting, including a  
5 description of the environment in the vicinity of the action, as it exists before  
6 commencement of the action, from both a local and regional perspective. Special  
7 emphasis shall be placed on environmental resources that are rare or unique to the  
8 region and the **program or**<sup>469</sup> project site (including natural or human-made resources of  
9 historic, **cultural,**<sup>470</sup> archaeological, or aesthetic significance); specific reference to  
10 related **programs or**<sup>471</sup> projects, public and private, existent or planned in the region shall  
11 also be included for purposes of examining the possible overall cumulative impacts of  
12 such actions. Proposing agencies and applicants shall also identify, where appropriate,  
13 population and growth characteristics of the affected area, ~~and~~ any population and  
14 growth assumptions used to justify the **proposed**<sup>472</sup> action, ~~and determine any~~<sup>473</sup>  
15 secondary population and growth impacts resulting from the proposed action and its  
16 alternatives. In any event, it is essential that the sources of data used to identify, qualify,  
17 or evaluate any and all environmental consequences be expressly noted in the draft  
18 EIS<sup>474</sup>.  
19
- 20 (h) The draft EIS shall include a statement description<sup>475</sup> of the relationship of the proposed  
21 action to land use and resource<sup>476</sup> plans, policies, and controls for the affected area.  
22 Discussion of how the proposed action may conform or conflict with objectives and  
23 specific terms of approved or proposed land use and resource<sup>477</sup> plans, policies, and  
24 controls, if any, for the area affected shall be included. Where a conflict or inconsistency  
25 exists, the ~~statement~~ draft EIS<sup>478</sup> shall describe the extent to which the agency or  
26 applicant has reconciled its proposed action with the plan, policy, or control, and the  
27 reasons why the agency or applicant has decided to proceed, notwithstanding the  
28 absence of full reconciliation. The draft EIS shall also contain a list of necessary  
29 approvals, required for the action, from governmental agencies, boards, or commissions  
30 or other similar groups having jurisdiction. The status of each identified approval shall  
31 also be described.

<sup>468</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>469</sup> **Clarifies that both programs and projects are referred to.**

<sup>470</sup> Adds "cultural" in line with Act 50 (2000).

<sup>471</sup> **Clarifies that both programs and projects in the regional shall be considered.**

<sup>472</sup> **Parallels use of "proposed" later in the sentence and distinguishes this "action" from "action" used previously in this paragraph.**

<sup>473</sup> Housekeeping.

<sup>474</sup> Housekeeping.

<sup>475</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Uses "description" similar to other paragraphs.

<sup>476</sup> Includes natural resource plans such as water management plans.

<sup>477</sup> Includes natural resource plans such as water management plans.

<sup>478</sup> Clarifies that this applies to draft EISs.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1
- 2 (i) The draft EIS shall include a ~~statement~~ an analysis<sup>479</sup> of the probable impact of the
- 3 proposed action on the environment, and impacts of the natural or human environment
- 4 on the ~~project~~ action.<sup>480</sup> ~~which~~ This analysis<sup>481</sup> shall include consideration of all phases
- 5 of the action and consideration of all consequences on the environment; including direct
- 6 and indirect effects ~~shall be included~~<sup>482</sup>. The interrelationships and cumulative
- 7 environmental impacts of the proposed action and other related projects actions<sup>483</sup> shall
- 8 be discussed in the draft EIS. ~~It~~<sup>484</sup> ~~should be realized~~ The draft EIS should recognize<sup>485</sup>
- 9 that several actions, in particular those that involve the construction of public facilities or
- 10 structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may
- 11 well stimulate or induce secondary effects. These secondary effects may be equally
- 12 important as, or more important than, primary effects, and shall be thoroughly discussed
- 13 to fully describe the probable impact of the proposed action on the environment. The
- 14 population and growth impacts of an action shall be estimated if expected to be
- 15 significant, and an evaluation shall be<sup>486</sup> made of the effects of any possible change in
- 16 population patterns or growth upon the resource base, including but not limited to land
- 17 use, water, and public services, of the area in question. Also, if the proposed action
- 18 constitutes a direct or indirect source of pollution as determined by any governmental
- 19 agency, necessary data regarding these impacts<sup>487</sup> shall be incorporated into the EIS.
- 20 The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and
- 21 (m).
- 22
- 23 (j) The draft EIS shall include in a separate and distinct section a description of the
- 24 relationship between local short-term uses of humanity's environment and the
- 25 maintenance and enhancement of long-term pro<sup>122</sup>activity. The extent to which the
- 26 proposed action involves trade-offs among short-term and long-term gains and losses
- 27 shall be discussed. The discussion shall include the extent to which the proposed action
- 28 forecloses future options, narrows the range of beneficial uses of the environment, or
- 29 poses long-term risks to health or safety. In this context, short-term and long-term do not
- 30 necessarily refer to any fixed time periods, but shall be viewed in terms of the
- 31 environmentally significant consequences of the proposed action.
- 32

<sup>479</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.

<sup>480</sup> Clarifies that this sentence applies to both projects and programs.

<sup>481</sup> Stylistic change to increase readability.

<sup>482</sup> Housekeeping.

<sup>483</sup> Clarifies that both projects and programs should be considered.

<sup>484</sup> Housekeeping. (v0.1 omitted strikethrough)

<sup>485</sup> Housekeeping.

<sup>486</sup> Housekeeping.

<sup>487</sup> Clarifies what the data should be about.

**#122**

Posted by **Anonymous** on **10/09/2017** at **5:09pm**  
Comment

Possibly change this a dedication to long-term sustainability measures and future generations to reflect the language in Waiāhole, vs. long-term viability of the project.

Agree: 0, Disagree: 0

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## Environmental Council

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

- 1 (k) The draft EIS shall include in a separate and distinct section a description of all  
 2 irreversible and irretrievable commitments of resources that would be involved in the  
 3 proposed action should it be implemented. Identification of unavoidable impacts and the  
 4 extent to which the action makes use of non-renewable resources during the phases of  
 5 the action, or irreversibly curtails the range of potential uses of the environment shall  
 6 also be included. The possibility of environmental accidents resulting from any phase of  
 7 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~  
 8 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~  
 9 ~~natural and cultural resources committed to loss or destruction by the action.~~  
 10 "Resources" shall be construed to also mean the natural and cultural resources  
 11 irreversibly and irretrievably committed to the action and not only to the labor and  
 12 materials committed to the action.<sup>488</sup>  
 13
- 14 (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot  
 15 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats  
 16 to public health, or other consequences adverse to environmental goals and guidelines  
 17 established by environmental response laws, coastal zone management laws, pollution  
 18 control and abatement laws, and environmental policy ~~such as that~~ including  
 19 those<sup>489</sup> found in chapters 128D (Environmental Response Law), 205A (Coastal Zone  
 20 Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D  
 21 (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F  
 22 (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste  
 23 Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used  
 24 Oil), 342L (Underground Storage Tanks), ~~342N,~~<sup>490</sup> 342P (Asbestos and Lead), and 344  
 25 (State Environmental Policy)<sup>491</sup>, HR 123 shall be included, including and<sup>492</sup> those effects  
 26 discussed in other ~~actions~~ subsections of this ~~paragraph~~ section<sup>493</sup> ~~which that~~ are  
 27 adverse and unavoidable under the proposed action must be addressed in the draft  
 28 EIS<sup>494</sup>. Also, the rationale for proceeding with a proposed action, notwithstanding  
 29 unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate  
 30 what other interests and considerations of governmental policies are thought to offset  
 31 the adverse environmental effects of the proposed action. The ~~statement~~ EIS shall also  
 32 indicate the extent to which these stated countervailing benefits could be realized by  
 33 following reasonable alternatives to the proposed action that would avoid some or all of  
 34 the adverse environmental effects.  
 35

<sup>488</sup> Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

<sup>489</sup> Housekeeping.

<sup>490</sup> Repealed.

<sup>491</sup> Provides titles of each chapter referenced.

<sup>492</sup> Housekeeping.

<sup>493</sup> Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

<sup>494</sup> Housekeeping. Replaces "shall be included", which was deleted in v0.1.

**#123**

Posted by **Anonymous** on **10/18/2017** at **10:43pm**

Question

What about County regulations, plans, policies?

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or  
 2 reduce ~~impact~~ impacts<sup>495</sup>, including provision for compensation for losses of cultural,  
 3 community, historical, archaeological, fish and wildlife resources, including the  
 4 acquisition of land, waters, and interests therein. Description of any mitigation measures  
 5 included in the action plan to reduce significant, unavoidable, adverse impacts to  
 6 insignificant levels, and the basis for considering these levels acceptable shall be  
 7 included. Where a particular mitigation measure has been chosen from among several  
 8 alternatives, the measures shall be discussed and reasons given for the choice made.  
 9 ~~Included~~ The draft EIS shall include, where possible and appropriate<sup>496</sup>, should  
 10 ~~be~~<sup>497</sup> specific reference to the timing of each step proposed to be taken in the any<sup>498</sup>  
 11 mitigation process. <sup>126</sup>at performance bonds, if any, may be posted, and what other  
 12 provisions are proposed to assure that the mitigation measures will in fact be take<sup>124</sup>  
 13
- 14 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved  
 15 issues and contains either a discussion of how such issues will be resolved prior to  
 16 commencement of the action, or what overriding reasons there are for proceeding  
 17 without resolving the problems issues<sup>499</sup>.
- 18
- 19 (o) The draft EIS shall include a separate and distinct section that contains a list identifying  
 20 all governmental agencies, other organizations and private individuals consulted in  
 21 preparing the statement, and the identity of the persons, firms, or agency preparing the  
 22 statement, by contract or other authorization, shall be disclosed.
- 23
- 24 (p) The draft EIS shall include a separate and distinct<sup>125</sup> section that contains:  
 25 (1)<sup>500</sup> reproductions Reproductions of all substantive written comments and responses  
 26 made during the consultation process thirty-day consultation period pursuant to  
 27 section 11-200-15, and responses to those comments and a summary of any EIS  
 28 public scoping meetings.<sup>501</sup> If a number of comments are identical or very similar,  
 29 the proposing agency may group the comments and prepare a single standard  
 30 response for each group. The name of each commentor shall be included with  
 31 the grouped response. One representative copy of identical or very similar  
 32 comments may be included rather than reproducing each comment<sup>502</sup> ; and a

<sup>495</sup> Housekeeping.

<sup>496</sup> Removes redundant language.

<sup>497</sup> Housekeeping.

<sup>498</sup> Changes reference to "any" mitigation measure process that may result from the analysis.

<sup>499</sup> Aligns language throughout sentence to reference "issues" rather than "issues" and "problems".

<sup>500</sup> Introduces subsections to increase clarity.

<sup>501</sup> Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).

<sup>502</sup> Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

## #124

Posted by **Anonymous** on **10/18/2017** at **10:44pm**

Question

Who will oversee and enforce the mitigation measures? The agency should identify enforcement responsibilities.

Agree: 0, Disagree: 0

## #125

Posted by **G70** on **10/20/2017** at **10:35pm**

Add allowance to reproduce non-substantive comments noting they are non-substantive and no reply required

Agree: 0, Disagree: 0

## #126

Posted by **Anonymous** on **10/09/2017** at **5:15pm**

Are performance bonds defined anywhere else in the document or will they be? Also, will there be repercussions if the mitigation measures are found to not be as effective as anticipated?

Agree: 0, Disagree: 0

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Environmental Council

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

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(2) A summary of oral<sup>503</sup> comments made at any EIS public scoping meeti<sup>127</sup><sup>504</sup> that identifies those persons or agencies that provided oral comments.<sup>505</sup> A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS in a manner indicating that no comment was provided.<sup>506</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5, 343-6)

<sup>503</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>504</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).<sup>129</sup><sup>128</sup> This sentence replicates the one deleted from subsection (p)(1) and creates another new subsection in order to distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting.

<sup>505</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>506</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

## #127

Posted by **Naaupo** on **10/06/2017** at **5:26pm**

Comment

Summaries of oral comments will likely require retaining a stenographer/court reporter. Will this be an added burden to compliance?

Agree: 0, Disagree: 0

## #128

Posted by **Anonymous** on **09/20/2017** at **2:29pm**

Comment

Or any handouts

Agree: 0, Disagree: 0

## #129

Posted by **Anonymous** on **09/20/2017** at **2:29pm**

Comment

And agenda shall be included.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

## Environmental Council

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

## 1 **§11-200-18 Content Requirements; Final Environmental** 2 **Impact Statement**

3 The final EIS shall consist of:

- 4 (1) The draft EIS prepared <sup>132</sup> in compliance with section 11-200-17, as<sup>507</sup> revised to  
5 incorporate substantive<sup>508</sup> comments received during the ~~consultation and~~<sup>509</sup>  
6 review processes;
- 7 (2) Reproductions of all ~~letters~~ written comments received contain <sup>131</sup> substantive  
8 questions, comments, or recommendations and, as applicable, summaries of any  
9 scoping meetings held during the ~~consultation and~~<sup>510</sup> review processes<sup>511</sup>;  
10 provided that if a number of written comments are identical or very similar, one  
11 representative copy of identical or very similar comments may be included rather  
12 than reproducing each comment;<sup>512</sup>
- 13 (3) A list of persons, organizations, and public agencies commenting on the draft  
14 EIS;
- 15 (4) T<sup>133</sup> Responses of the applicant or proposing agency or applicant<sup>513</sup> to each  
16 substantive question, comment, or recommendation written comments<sup>514</sup>  
17 received in the review and consultation processes, ~~provided that if a number~~<sup>130</sup>  
18 written comments are identical or very similar, the proposing agency or applicant  
19 may group the comments and prepare a single standard response for each  
20 group. The name of each commentor shall be included with the grouped  
21 response;<sup>515</sup> ~~.~~<sup>516</sup>

<sup>507</sup> Connects this section with the previous section content requirements.

<sup>508</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>509</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>510</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>511</sup> Aligns language with the EISPN and draft EIS requirements.

<sup>512</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>513</sup> Place "proposing agency" before "applicant".

<sup>514</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>515</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>516</sup> Housekeeping.

## #130

Posted by **G70** on **10/20/2017** at **10:29pm**

agree with response to grouped comments that are identical and very similar. Streamlining responses to comments represents a common-sense change that reduces the burden on proposing agencies and applicants posed by voluminous and nearly identical comments.

Agree: 0, Disagree: 0

## #131

Posted by **G70** on **10/20/2017** at **10:31pm**

Disagree with substituting the word "substantive" with "written." Same as comment to §11-200-15

Agree: 0, Disagree: 0

Reply by **G70** on **10/20/2017** at **10:34pm**

correction to comment: non-substantive comments should be reproduced and marked as such (with no response required)

Agree: 0, Disagree: 0

## #132

Posted by **G70** on **10/20/2017** at **10:52pm**

disagree with striking "substantive" - see following comments

Agree: 0, Disagree: 0

## #133

Posted by **G70** on **10/20/2017** at **10:28pm**

Disagree with removal of "substantive" and replacing with "written". for same reasons expressed in Section 11-200-15. The ability to address only substantive comments allows focus on the salient issues of the environmental analysis. Responses to irrelevant comments adds a burden of time and expense to the disclosure process that does not improve the analysis.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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(5) A written summary of oral comments made at any public hearings<sup>517</sup> identifying those persons or agencies that provided oral comments;<sup>518</sup>

(6) A list of those persons or agencies who were consulted with in preparing the final EIS and had no comment shall be included in the final EIS in a manner indicating that no comment was provided;<sup>519</sup>; and

(57) The text of the final EIS ~~which shall be~~<sup>520</sup> written in a format ~~which~~ that allows the reader to easily distinguish changes made to the text of the draft EIS.

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5, 343-6)

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<sup>517</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

<sup>518</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments. A list of these persons and agencies is sufficient.

<sup>519</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

<sup>520</sup> Housekeeping.

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Environmental Council

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

**§11-200-19 Environmental Impact Statement Style**

(a)<sup>521</sup> In developing the draft and final<sup>522</sup> EIS, preparers<sup>523</sup> proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government<sup>524</sup> decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail<sup>525</sup> of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement an EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project<sup>526</sup> over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur<sup>134</sup> under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

<sup>521</sup> Adding a new paragraph requires adding paragraph identifiers.

<sup>522</sup> Clarifies that this section applies to draft and final EISs.

<sup>523</sup> Removes introduction of a new term and replaces it with terms used consistently in the regulations. "proposing agencies and applicants".

<sup>524</sup> Global edit to reduce confusion regarding the meaning of "public".

<sup>525</sup> Removes "detail" because "detail" is already discussed as being commensurate with the potential for impact.

<sup>526</sup> Change "project or program" to "program or project".



**#134**

Posted by **Naaupo** on **10/06/2017** at **6:04pm**

Break out into separate paragraph.

Agree: 0, Disagree: 0

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Environmental Council

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

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out in conformance with the conditions and mitigation measures presented in the EIS may require no or limited further review.<sup>527</sup>

(c) In preparing any EIS, Care care<sup>528</sup> shall be taken to concentrate on important issues and to ensure that the statement EIS<sup>529</sup> remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.

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

---

<sup>527</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

<sup>528</sup> Stylistic change to provide more clarity.

<sup>529</sup> Housekeeping.

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Environmental Council

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

**§11-200-20 Filing of an Environmental Impact Statement**

135

(a) The proposing agency or applicant shall file the original (signed)<sup>530</sup> draft EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>531</sup>. Simultaneously, a minimum number of four copies of<sup>532</sup> the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed)<sup>533</sup> final EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority~~<sup>534</sup>. Simultaneously, four copies of<sup>535</sup> the final EIS shall be filed with the office.

~~(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.~~<sup>536</sup>

~~(d)~~<sup>537</sup> The proposing agency or applicant shall sign and date the original copy of<sup>538</sup> the draft or final EIS and shall indicate that the statement EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate<sup>539</sup>

(d) The office shall be responsible for the publication of the notice of availability of the draft and final EIS in its bulletin.<sup>539</sup>

[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

<sup>530</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>531</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>532</sup> OEQC only needs one copy, not four.

<sup>533</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>534</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>535</sup> OEQC only needs one copy, not four.

<sup>536</sup> Removes the paragraph because the language is unnecessary.

<sup>537</sup> Renumbers the paragraph.

<sup>538</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>539</sup> Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.

## #135

Posted by **Anonymous** on **09/19/2017** at **3:41am**  
Comment

Proposing that another section be added such as (e) stating that Draft and Final EIS copies are to be submitted in pdf formats that are UNSECURED.

Reasoning: in the review in past EIS copies that were formatted with a SECURED setting, it prevented adequate and reasonable access to the document during the commenting period. For example, when the document is secured, it prevents someone from printing certain pages or from cutting and pasting certain sections that we want to comment upon. Instead, an individual has to re-type the entire sections in their comments.

Agree: 0, Disagree: 0

## #136

Posted by **Naaupo** on **10/06/2017** at **6:11pm**  
Comment

Move this to the EIS content requirements in 11-200-17

Agree: 0, Disagree: 0

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Environmental Council

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

**§11-200-21 Distribution**<sup>540</sup> 137

1  
2 The office shall be responsible for the publication of the notice of availability of the EIS in its  
3 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with  
4 jurisdiction or expertise in certain areas relevant to various actions) and make it available to the  
5 proposing agency or applicant.<sup>541</sup> and a list of public depositories, which shall include public  
6 libraries, where copies of the statements shall be available, and to the extent possible, the  
7 The<sup>542</sup> proposing agency or applicant shall make copies of<sup>543</sup> the EIS available to individuals  
8 requesting the EIS. The office's distribution list may be developed cooperatively among the  
9 applicant or proposing agency, the accepting authority, and the office; provided that<sup>544</sup> the office  
10 shall be responsible for determining the final list. The applicant or proposing agency shall  
11 directly distribute the required copies to those on the distribution list after the office has verified  
12 to the applicant or proposing agency the accuracy of the distribution list. For final statements,  
13 the agency or applicant shall give the commenter an option of requesting a copy of the final EIS  
14 or portions thereof.<sup>545/54</sup> 138

15  
16 [~~Eff 12/6/85; am and comp AUG 31 1996~~] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-5,  
17 343-6)

<sup>540</sup> ~~Deletes section because, due to the availability of the bulletin online, it is no longer necessary to specify the distribution process in such detail and to require distribution of paper copies of draft and final EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations. The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20, Filing, and the requirement for the office to produce and make available a distribution list has been slightly modified and moved to subsection (b) in section 11-200-14, General Provisions.~~

<sup>541</sup> ~~Removes the requirement for proposing agencies or applicants to verify a distribution list with the office. Electronic distribution of the documents and online availability of a distribution list developed by the office meet the objectives of this requirement more efficiently.~~

<sup>542</sup> ~~Removes outdated depositories requirement as all documents and determinations are available online to anyone.~~

<sup>543</sup> ~~Removes unnecessary language. The EIS will primarily be made available electronically, whereas "copies" implies a paper version.~~

<sup>544</sup> ~~Housekeeping.~~

<sup>545</sup> ~~Removes outdated requirement to provide the commenter with an option to request the document or a portion of it as all documents and determinations are available online to anyone.~~

<sup>546</sup> ~~Modernizes the distribution process. The office is required under chapter 343 to produce and distribute the bulletin. This process is now electronic and all published environmental review documents and determinations are available freely online. Because information is now available online, the concern that agencies and members of the public would not have notice of or access to the documents without a hard copy of the documents is no longer applicable.~~

## #137

Posted by **Naaupo** on **09/15/2017** at **6:51pm**  
Comment

In accordance with the LRB style manual include - REPEALED at the end of Line 1.

Also add [R xxx/xx/2018] at the end of line 17.

Agree: 0, Disagree: 0

## #138

Posted by **Anonymous** on **10/02/2017** at **1:45am**  
Comment

Prefer all of this not be deleted. As a frequent Commentor (representing a Neighborhood Assn and also a Sierra Club Island Group) we prefer receiving one hard copy which we circulate amongst board members for review/comment. It is too cumbersome to cross reference pages in an electronic file. Also, how does the public ensure that OEQC has included interested persons/organizations with jurisdiction or expertise on the distribution list for pre-consultation, EISPNs, DEAs, DEISs?

Agree: 0, Disagree: 0

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Environmental Council

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

**§11-200-22 Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements Public Review and Response Requirements for Draft EISs and Addenda<sup>547</sup>**

(a) Public review shall not substitute for early and open discussion with interested persons and agencies;<sup>548</sup> concerning the environmental impacts of a proposed action. Review of the draft<sup>549</sup> EIS, shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence ~~as of~~ from the date that<sup>550</sup> notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five~~139~~<sup>139</sup>ys. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the ~~applicant or~~ proposing agency or applicant<sup>551</sup>, shall be received or postmarked to the approving agency or accepting authority, within ~~said the~~<sup>552</sup> forty-five-day comment<sup>553</sup> period. Any comments outside of the forty-five day comment period need not be ~~considered or~~ responded to nor considered<sup>554</sup>.

(c) The proposing agency or applicant shall respond ~~in writing~~<sup>555</sup> to the comments received or postmarked during the forty-five-day review period and incorporate the comments and ~~responses~~<sup>141</sup> in the final EIS<sup>140</sup>. The response to comments shall include:

- (1) Point-by-point discussion of the validity, significance, and relevance of comments; and
- (2) Discussion as to how each comment was evaluated and considered in ~~planning the proposed action~~ preparing the final EIS<sup>556</sup>.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns.

~~Response letters reproduced in the text of the final EIS~~<sup>557</sup> The response shall indicate

<sup>547</sup> Rephrases title so that it is clearer that the whole section is about draft EISs.

<sup>548</sup> Housekeeping.

<sup>549</sup> Clarifies that the document is a draft EIS.

<sup>550</sup> Housekeeping."

<sup>551</sup> Place "proposing agency" before "applicant".

<sup>552</sup> Housekeeping.

<sup>553</sup> Clarifies that the forty-five days is for the comment period.

<sup>554</sup> Stylistic change to increase readability.

<sup>555</sup> Removes phrase because the response must be in the final EIS, which is written.

<sup>556</sup> Focus on how the comment is addressed in the final EIS rather than just action.

<sup>557</sup> Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.

## #139

Posted by **Anonymous** on **10/18/2017** at **10:47pm**

Question

Calendar or working days? Recommend working.

Agree: 0, Disagree: 0

## #140

Posted by **Anonymous** on **10/02/2017** at **1:47am**

Comment

Suggest making these 2 sentences to clearly identify the need for COMMENTORS to receive responses in writing IN ADVANCE of the FEIS, and subsequently again in the FEIS.

Agree: 0, Disagree: 0

## #141

Posted by **G70** on **10/20/2017** at **10:49pm**

Strike "Point-by-point" . Bring this section in line with the judgement proposed to allow comments and responses in a common-sense manner and reduce the burden on proposing agencies and applicants posed by voluminous and non-substantial comments.

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 verbatim changes that have been made to the text of the draft EIS. The response shall  
 2 describe the disposition of significant environmental issues raised (e.g., revisions to the  
 3 proposed **project action**<sup>558</sup> to mitigate anticipated impacts or objections, etc.). In  
 4 particular, the issues raised when the **applicant's or** proposing agency's **or applicant's**<sup>559</sup>  
 5 position is at variance with recommendations and objections raised in the comments  
 6 shall be addressed in detail, giving reasons why specific comments and suggestions  
 7 were not accepted, and factors of overriding importance warranting an override of the  
 8 suggestions. If a number of comments are identical or very similar, the proposing agency  
 9 or applicant may group the comments and prepare a single standard response for each  
 10 group. The comments must be attached to the final EIS regardless of whether the  
 11 agency or applicant believes they merit individual discussion in the body of the final  
 12 EIS.<sup>560</sup> 142

14 (d) An addendum document<sup>561</sup> to a draft ~~environmental impact statement~~ EIS shall  
 15 reference the original draft ~~environmental impact statement~~ EIS to which<sup>562</sup> it attaches  
 16 ~~to~~<sup>563</sup> and comply with all applicable filing, public review, and comment requirements set  
 17 forth in subchapter 7.

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

20  
21  
22

<sup>558</sup> Provides clarity that revisions may be made to a project or a program.

<sup>559</sup> Place "proposing agency's" before "applicant's".

<sup>560</sup> Because the responses are included in the final EIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome **and** without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a, and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in **the** identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>561</sup> Removes the word document as it is unnecessary.

<sup>562</sup> Housekeeping.

<sup>563</sup> Housekeeping.

**#142**

Posted by **Anonymous** on **10/02/2017** at **1:49am**

Comment

Recommend a new paragraph for the text that follows the "IF..."

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

**§11-200-23 Acceptability**

(a) Acceptability of a ~~statement~~ final EIS<sup>564</sup> shall be evaluated on the basis of whether the ~~statement~~ final EIS<sup>565</sup>, in its completed form, represents an informational instrument which that fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,<sup>566</sup> and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A ~~statement~~ final EIS<sup>567</sup> shall be deemed to be an acceptable document by the accepting authority or approving agency only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the ~~statement~~ EIS, from proposal of the action to publication of the final EIS,<sup>568</sup> have all been completed satisfactorily as specified in this chapter;

(2) The content requirements described in this chapter have been satisfied; and

(3) Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been appropriately<sup>569</sup> ~~incorporated in~~ into the statement final EIS<sup>570</sup>, and comments and responses have been appended to the final EIS<sup>571</sup>.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>572</sup> authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>573</sup> authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or non-acceptability<sup>574</sup> of the proposing agency's statement EIS. In the event that the action involves ~~both~~ state and county lands ~~or~~, state or county funds, or both state and county lands and state and

<sup>564</sup> Clarifies that the document is a final EIS.

<sup>565</sup> Clarifies that the document is a final EIS.

<sup>566</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

<sup>567</sup> Clarifies that the document is a final EIS.

<sup>568</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

<sup>569</sup> Recognizes that not all comments are incorporated into an EIS.

<sup>570</sup> Clarifies that the document is a final EIS.

<sup>571</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.

<sup>572</sup> Housekeeping.

<sup>573</sup> Housekeeping.

<sup>574</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            **county**<sup>575</sup> funds,<sup>576</sup> the governor or ~~an~~ the governor's<sup>577</sup> authorized representative shall  
 2            have final authority to accept the EIS.  
 3  
 4    (d)<sup>578</sup> Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate  
 5            accepting authority with both the proposing agency and the office. For any non-accepted  
 6            EIS, the notice shall contain specific findings and reasons for non-acceptance. The office  
 7            shall publish notice of the determination of acceptance or non-acceptance in the periodic  
 8            bulletin in accordance with section 11-200-3. Acceptance of a required statement shall  
 9            be a condition precedent to the use of state or county lands or funds in implementing the  
 10           proposed action.  
 11  
 12    (de) For actions proposed by applicants requiring approval from an agency, the applicant or  
 13           accepting authority, which is the approving agency,<sup>579</sup> may request the office to make a  
 14           recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If  
 15           the office decides to make a recommendation, it shall submit the recommendation to the  
 16           applicant and the approving agency within the ~~thirty-day~~<sup>580</sup> period requiring an approving  
 17           agency to determine the acceptability of the final EIS ~~and described in section 343-5(c),~~  
 18           HRS<sup>581</sup>. Upon acceptance or non-acceptance by the approving agency, the agency shall  
 19           notify the applicant of its determination, and provide specific findings and reasons. The  
 20           agency shall also provide a copy of this determination to the office for publication of a  
 21           ~~notice~~<sup>582</sup> in the periodic bulletin. Acceptance of the required EIS shall be a condition  
 22           precedent to approval of the request and commencement of the proposed action. ~~An~~  
 23           ~~approving agency shall take prompt measures to determine the acceptability or non-~~  
 24           ~~acceptability of the applicant's statement.~~<sup>583</sup> The agency shall notify the applicant and  
 25           the office of the acceptance or non-acceptance of the final EIS within thirty days of the  
 26           final EIS submission to the agency<sup>584, 585</sup> provided that the thirty-day period may, at the  
 27           request of the applicant, be extended ~~at the request of the applicant~~<sup>586</sup> for a period not to  
 28           exceed fifteen days. The request shall be made to the accepting authority in writing.

<sup>575</sup> Provides clarity that "state and county" applies to both funds and lands.

<sup>576</sup> Clarifies cases situations where a proposed action has mixed state and county lands or funds or both lands and funds.

<sup>577</sup> Housekeeping.

<sup>578</sup> Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

<sup>579</sup> Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

<sup>580</sup> Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.

<sup>581</sup> Unnecessary language.

<sup>582</sup> Housekeeping.

<sup>583</sup> Redundant when read with the following sentence that sets forth a timeline.

<sup>584</sup> Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.

<sup>585</sup> Housekeeping.

<sup>586</sup> Housekeeping.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Upon receipt of an applicant's written<sup>587</sup> request for an extension of the thirty-day  
 2 acceptance period, the accepting authority shall notify the office and applicant in writing  
 3 of its decision to grant or deny the request. The notice shall be accompanied by a copy  
 4 of the applicant's request. An extension of the thirty-day acceptance period shall not be  
 5 allowed granted<sup>588</sup> merely for the convenience of the accepting authority. In the event  
 6 that the agency fails to make a determination of acceptance or non-acceptance for of<sup>589</sup>  
 7 the statement EIS<sup>590</sup> within thirty days of the receipt of the final EIS, then the statement  
 8 shall be deemed accepted.

9  
 10 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision  
 11 shall take the form of a revised draft EIS ~~document~~<sup>591</sup> which shall fully address the  
 12 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the  
 13 changes made. The requirements for filing, distribution, publication of availability for  
 14 review, acceptance or non-acceptance, and notification and publication of acceptability  
 15 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,<sup>592</sup>  
 16 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised<sup>143</sup>  
 17 draft EIS and the subsequent revised final EIS<sup>593</sup> shall be evaluated for acceptability on  
 18 the basis of whether it satisfactorily addresses the findings and reasons for non-  
 19 acceptance.

20  
 21 (fg) A proposing agency or applicant may withdraw an EIS by simultaneously<sup>594</sup> sending a  
 22 ~~letter~~ written notification<sup>595</sup> to the office and to the accepting authority<sup>596</sup> informing the  
 23 office of the proposing<sup>597</sup> agency's or applicant's withdrawal. Subsequent resubmittal of  
 24 the EIS shall meet all requirements for filing, distribution, publication, review,  
 25 acceptance, and notification as a ~~new~~ draft<sup>598</sup> EIS.

26  
 27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
 28  
 29

587 Connects to the previous sentence, clarifying that the request shall be made in writing.

588 Mirrors language within the provision.

589 Housekeeping.

590 Housekeeping.

591 Housekeeping.

592 Proposed to be deleted.

593 Added revised final EIS as the next step following a revised draft EIS.

594 Requires the office and accepting authority to be notified of the withdrawal at the same time.

595 Removes the requirement for a letter and simply requires written notification, such as by email.

596 Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

597 Clarifies that the agency withdrawing the proposal is the proposing agency.

598 Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

**#143**

Posted by **Naaupo** on **10/06/2017** at **6:47pm**  
Comment

Revised draft EISs are not processed for acceptability.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 8 Appeals

2 **§11-200-24 Appeals<sup>144</sup> to the Council**

3 An applicant, within sixty days after a<sup>599</sup> non-acceptance determination by the approving agency  
4 under section 11-200-23<sup>600</sup> of a statement a final EIS<sup>601</sup> by an agency<sup>602</sup>, may ~~to choose to~~<sup>603/604</sup>  
5 appeal the non-acceptance to the council, which within ~~thirty~~ <sup>sixty</sup><sup>605</sup> days of receipt of the  
6 appeal, shall notify the applicant of its determination to affirm the approving agency's non-  
7 acceptance or to reverse it<sup>606</sup>. The council chairperson shall include the appeal on the agenda  
8 of the council meeting immediately following the chairperson's receipt of the appeal. The council  
9 shall be deemed to have received the appeal on the date of the meeting for which the appeal is  
10 agendized.<sup>607</sup> In any affirmation or reversal of an appealed non-acceptance, the council shall  
11 provide the applicant and the agency with specific findings and reasons for its determination.  
12 The agency shall abide by the council's decision. An applicant may seek judicial review of the  
13 council's determination under chapter 91, HRS.<sup>608</sup> Pursuing an appeal by council does not  
14 abrogate an applicant's option under section 343-7(e), HRS, to bring judicial action.<sup>609/610</sup>

15  
16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
17  
18

<sup>599</sup> Housekeeping.

<sup>600</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>601</sup> Clarifies that the document is a final EIS.

<sup>602</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>603</sup> ~~"Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.~~

<sup>604</sup> Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.

<sup>605</sup> Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

<sup>606</sup> Clarifies the Council's determination.

<sup>607</sup> Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

<sup>608</sup> Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council's decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council's procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council's decision under chapter 91-14, HRS.

<sup>609</sup> ~~Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the cCouncil is unable to obtain quorum after an applicant appeals to the cCouncil.~~

<sup>610</sup> Judicial review of the appeal is now addressed in the previous sentence.

**#144**

Posted by **Anonymous** on **10/02/2017** at **1:50am**

Question

CAN THE PUBLIC APPEAL?

Agree: 0, Disagree: 0



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 9 National Environmental Policy Act

2 **§11-200-25 National Environmental Policy Act Actions:**  
3 **Applicability to Chapter 343, HRS**

4 When ~~the situation occurs where~~<sup>611</sup> a certain action will be subject both to the National  
5 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
6 Public Law 94-83; 42 U.S.C. § sections<sup>612</sup> 4321-4347) and chapter 343, HRS, the following shall  
7 occur:

8 (1) The applicant or agency, upon discovery of its proposed action being subject to  
9 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>613</sup>,  
10 shall notify the responsible federal agency, the office, and any agency with a  
11 definite interest in the action (as prescribed by chapter 343, HRS) ~~of the~~  
12 ~~situation.~~<sup>614</sup>

13  
14 (2) Where a federal agency determines that the proposed action is exempt<sup>615</sup> from  
15 review under the NEPA, the determination does not automatically constitute an  
16 exemption for the purposes of this chapter. In such cases, state and county  
17 agencies remain responsible for compliance with this chapter. However, the  
18 federal exemption may be considered in the state or county agency  
19 determination.<sup>616</sup>

20  
21 (3) Where a federal agency issues a FONSI and concludes that an statement EIS is  
22 not required under the NEPA, the this determination does not automatically  
23 constitute compliance with this chapter. In such cases, state and county agencies  
24 remain responsible for compliance with this chapter. However, the federal FONSI  
25 may be considered in the state or county agency determination.<sup>617</sup>

26

<sup>611</sup> Housekeeping.

<sup>612</sup> Housekeeping.

<sup>613</sup> Housekeeping.

<sup>614</sup> Housekeeping.

<sup>615</sup> The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

<sup>616</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

<sup>617</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1           (24) The National Environmental Policy Act NEPA<sup>618</sup> requires that draft<sup>619</sup> statements  
2           EISs<sup>620</sup> be prepared by the responsible federal agency. In the case of actions for  
3           which an EIS pursuant to the NEPA has been prepared by the responsible  
4           federal agency, the draft and final federal statements EIS may be submitted to  
5           comply with this chapter,<sup>621</sup> so long as the federal EIS satisfies the EIS content  
6           requirements of this chapter and is not found to be inadequate under the NEPA  
7           by a court; by the council on environmental quality (CEQ) (or is at issue in pre-  
8           decision<sup>622/623</sup> referral to CEQ) under the NEPA regulations; or by the  
9           administrator of the United States Environmental Protection Agency under  
10           section 309 of the Clean Air Act, 41 U.S.C. 1857.<sup>624</sup> The responsible federal  
11           agency's supplemental EIS requirements shall apply in the these<sup>625</sup> cases in  
12           place of this chapter's supplemental EIS requirements.<sup>626</sup>
- 13
- 14           (5)<sup>627</sup> When the responsibility of preparing an EIS is delegated to a state or county  
15           agency, this chapter shall apply in addition to federal requirements under the  
16           National Environmental Policy Act NEPA<sup>628</sup>. The office and state or  
17           county<sup>629</sup> agencies shall cooperate with federal agencies to the fullest extent  
18           possible to reduce duplication between federal and state requirements. This  
19           cooperation, to the fullest extent possible, shall include joint environmental  
20           impact statements EISs with concurrent public review and processing at both  
21           levels of government. Where federal law has environmental impact statement  
22           EIS requirements in addition to but not in conflict with this chapter, the office and  
23           agencies shall cooperate in fulfilling the requirements so that one document shall  
24           comply with all applicable laws. Where the NEPA process requires earlier or

<sup>618</sup> Housekeeping.

<sup>619</sup> Language is applicable to draft and final.

<sup>620</sup> Housekeeping.

<sup>621</sup> Based on Massachusetts' statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses this chapter's content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

<sup>622</sup> Housekeeping.

<sup>623</sup> Housekeeping.

<sup>624</sup> Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.

<sup>625</sup> Housekeeping.

<sup>626</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>627</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

<sup>628</sup> Housekeeping.

<sup>629</sup> Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

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more stringent public review and processing, that process shall satisfy this chapter so that duplicative consultation or review do not occur.<sup>630</sup>

(36) In all actions where the use of state land or funds is proposed, the final ~~statement~~ EIS shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed<sup>631</sup>, the final ~~statement~~ EIS shall be submitted to the mayor, or an authorized representative. The final ~~statement~~ EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the ~~Environmental Protection Agency or~~<sup>632</sup> responsible federal agency.

(47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section<sup>633</sup> shall satisfy chapter 343, HRS, and no other ~~statement~~ EIS for the proposed action shall be required.

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

<sup>630</sup> Addresses, for example, situations where a federal agency's regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

<sup>631</sup> Clarifies the condition that requires the mayor or the mayor's authorized representative to be the accepting authority.

<sup>632</sup> Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

<sup>633</sup> Changes language to "this section" instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Proposed New Subchapter X Programmatic EISs

2 **~~Proposed §11-200-XX Programmatic Environmental~~**  
3 **~~Impact Statements~~<sup>634/635</sup>**

4 ~~(a) — Proposing agencies may prepare a PEIS on the adoption of a comprehensive~~  
5 ~~plan prepared in accordance with relevant laws. Impacts of individual actions proposed~~  
6 ~~to be carried out in conformance with these adopted plans and regulations and the~~  
7 ~~thresholds or conditions identified in the PEIS may require no or limited further review.~~

8  
9 ~~(b) — Approving agencies may allow applicants to prepare a PEIS on the adoption of a~~  
10 ~~comprehensive plan prepared in accordance with relevant laws. Impacts of individual~~  
11 ~~actions proposed to be carried out in conformance with these adopted plans and~~  
12 ~~regulations and the thresholds or conditions identified in the PEIS may require no or~~  
13 ~~limited further review.~~

14  
15 ~~(c) — Upon acceptance of a final programmatic PEIS:<sup>636</sup>~~

16 ~~(1) — If a PEIS evaluates project-level issues such as precise project footprints or~~  
17 ~~specific design details, no further compliance with this chapter is required if a~~  
18 ~~subsequent proposed action will be carried out in conformance with the~~  
19 ~~conditions and thresholds established for such actions in the PEIS.~~

20 ~~(2) — Further chapter 343, HRS, environmental review must be prepared if a~~  
21 ~~subsequent proposed action was not addressed in the PEIS or the subsequent~~  
22 ~~proposed action exceeds the thresholds evaluated in the PEIS, and the~~  
23 ~~subsequent action may have a significant impact on the environmental. Further~~  
24 ~~review may be in the form of an EIS, EA, or exemption, for specific components~~  
25 ~~of the proposal.~~

26  
27  
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<sup>634</sup> ~~Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.~~

<sup>635</sup> ~~Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.~~

<sup>636</sup> ~~Housekeeping.~~

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 **~~Proposed §11-200-XX Content Requirements; Draft~~**  
2 **~~Programmatic Environmental Impact Statement~~<sup>637/638</sup>**

3 (a) The content requirements for a PEIS shall be the same as those for an EIS set  
4 forth in subchapter 7, with the understanding that the level of detail in a PEIS may be  
5 less than that of a project-level<sup>639</sup> EIS. The level of detail in a PEIS must be sufficient to  
6 allow informed choice among planning-level alternatives and to develop broad mitigation  
7 strategies. A PEIS should examine the interaction among proposed projects or plan  
8 elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also  
9 includes an examination of alternatives.

10  
11 (b) The PEIS may be broader and more general than a project-level EIS and omit  
12 evaluating project-level issues that are not yet ready for decision at the planning level, or  
13 it may evaluate project-level issues such as precise project footprints or specific design  
14 details.

15  
16 (c) A PEIS should discuss the logic and rationale for the choices advanced. It may  
17 also include an assessment of specific impacts, if such details are available,<sup>640</sup> and  
18 specific mitigation measures. It may be based on conceptual information in some cases.  
19 It may discuss in general terms the constraints and sequences of events likely to result  
20 in<sup>641</sup> any narrowing of future options. It may present and analyze in general terms  
21 hypothetical scenarios that are likely to occur.  
22

<sup>637</sup> Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.

<sup>638</sup> Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

<sup>639</sup> Uses consistent language to distinguish between project-level EISs and program-level EISs.

<sup>640</sup> Housekeeping.

<sup>641</sup> Increases readability.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 10 Supplemental Statements

2 **§11-200-26 Supplemental EIS<sup>642</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 145  
 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  
 12 prepared and reviewed as provided by this chapter.<sup>643</sup> unless: 147

13  
 14 (1) The project has changed substantively in the following characteristics: size,  
 15 scope, use, location or timing, among other things, which may have a significant  
 16 effect.<sup>644</sup>

17 (2) New information indicating significant effects, which was not known and could not  
 18 have been known at the time the EIS was accepted as complete, becomes  
 19 available.<sup>645</sup> 148

20  
 21 (b) In the case of newly discovered information, the decision to require preparation of a  
 22 supplemental EIS must be based on the following criteria:

23 (1) The information can be from any source.

24 (2) The information must be newly discovered. It cannot be information that could  
 25 have been included in comments filed in the original draft EIS or final EIS.

26 (3) The information must be important, indicating probably<sup>646</sup> significant  
 27 environmental impacts.

28 (4) The information must not have been addressed in the prior EIS, or must have  
 29 been inadequately addressed.<sup>647</sup>

30  
 31 (c) As long as there is no change in a proposed action or new information indicating 146  
 32 significant effects resulting in individual or cumulative impacts not originally disclosed,

<sup>642</sup> Clarifies in the title that this is about supplemental EISs (to distinguish it this section from those regarding regular EISs and programmatic EISs).

<sup>643</sup> Restores original SEIS section language.

<sup>644</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

<sup>645</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

<sup>646</sup> Housekeeping.

<sup>647</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge could can be used as a reason to require a supplemental EIS.

## #145

Posted by **Anonymous** on **09/29/2017** at **6:42pm**

Question

please clarify what is meant by "intensity."

Agree: 0, Disagree: 0

## #146

Posted by **Anonymous** on **10/02/2017** at **1:59am**

Comment

DO NOT DELETE "new information indicating significant effects"

Agree: 0, Disagree: 0

## #147

Posted by **Anonymous** on **09/29/2017** at **6:41pm**

Comment

Make the following changes in Subsection (a): "An EIS that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. . . . no supplemental EIS for that proposed action shall be required, to the extent that the action has reached substantial commencement and has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed accepted shall . . ." Also delete Subsection (c).

Agree: 0, Disagree: 0

## #148

Posted by **Anonymous** on **10/02/2017** at **2:03am**

Comment

This is important to retain. Over a period of time, there are population changes, infrastructure changes, environmental changes. These are important considerations that warrant a SEIS that has become outdated.

Agree: 0, Disagree: 0

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Environmental Council

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

1 the ~~statement~~ EIS associated with that action shall be deemed to comply with this  
2 chapter.

3

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

5



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Environmental Council

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

1 **§11-200-27 Supplemental EIS<sup>648</sup> Determination of**  
2 **Applicability**

3 The accepting authority or approving agency in coordination with the original accepting authority  
4 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
5 period of five<sup>151150</sup> years has elapsed since the acceptance of the final EIS, and the project or  
6 program program or project<sup>649</sup> has not substantially commenced, the accepting authority or  
7 approving agency shall formally re-evaluate the need for a supplemental statement EIS and  
8 make a determination of whether a supplemental statement EIS<sup>650</sup> is required. A written 149  
9 summary of this evaluation and the<sup>651</sup> This determination will be submitted to the office for  
10 publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public  
11 review supplemental statements EISs whenever the proposed action for which a an<sup>652</sup>  
12 statement EIS was accepted has been modified to the extent that new or different  
13 environmental impacts are anticipated. A supplemental statement EIS shall be warranted when  
14 the scope of an action has been substantially increased, when the intensity of environmental  
15 impacts will be increased, when the mitigating measures originally planned are will  
16 implemented, or where new circumstances or evidence have brought to light different or likely  
17 increased environmental impacts not previously dealt with.

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
20  
21  
22

<sup>648</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>649</sup> Changes “project or program” to “program or project” to be consistent with the definition of action.

<sup>650</sup> Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

<sup>651</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

<sup>652</sup> Housekeeping.

## #149

Posted by **Anonymous** on **09/20/2017** at **2:46pm**  
Comment

Written summary should not be required to be published in bulletin. Summary should be kept with agency only.

Agree: 0, Disagree: 0

## #150

Posted by **Anonymous** on **09/20/2017** at **2:44pm**  
Comment

Disregard this comment. Sorry

Agree: 0, Disagree: 0

## #151

Posted by **Anonymous** on **09/20/2017** at **2:42pm**  
Comment

Five years seems kind of short because after acceptance of EIS usually design begins and this can take years. How was this timeline determined? The agency should have the sole discretion to reevaluation and provide if necessary a supplemental EIS.

Agree: 0, Disagree: 0

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Environmental Council

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

1 **§11-200-28 Supplemental EIS<sup>653</sup> Contents**

2 The contents of the supplemental ~~statement~~ EIS shall be the same as required by this chapter  
3 for the EIS and may incorporate by reference unchanged material from the same; however, in  
4 addition, it shall fully document the proposed changes from the original EIS, including changes  
5 in ambient conditions or available information that have a bearing on a proposed action or its  
6 impacts, the positive and negative aspects of these changes, and shall comply with the content  
7 requirements of section 11-200-16 as they relate to the changes.

8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

10  
11  
12

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<sup>653</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

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Environmental Council

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

1 **§11-200-29 Supplemental EIS<sup>654</sup> Procedures**

2 The requirements of the thirty-day consultation, ~~filling~~ public notice filing<sup>655</sup>, distribution, the forty-  
3 five-day public review, comments and response, and acceptance procedures, shall be the same  
4 for the supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.

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

7  
8  
9

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<sup>654</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>655</sup> Stylistic change to increase readability.

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Environmental Council

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

**Proposed §11-200-XX<sup>656</sup> Retroactivity**

152

(a) The rules shall apply immediately upon taking effect.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200 (2018), provided that:

(1) For EAs, if the draft EA was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and has not received a determination within a period of five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018). All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200 (2018).

(2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication and published by the office prior to the adoption of HAR chapter 11-200 (2018) and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200 (2018), then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200 (2018).

(3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

(d) All exemption<sup>154</sup> sued after adoption of HAR chapter 11-200 (2018) must comply with HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a period of five years after the adoption of HAR chapter 11-200 (2018), after which time the agency must revise its list and seek concurrence from council.<sup>657</sup>

155

<sup>656</sup> Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or undergoing it at the time the revised rules take effect.

<sup>657</sup> Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action.

## #152

Posted by **Anonymous** on **09/20/2017** at **3:22pm**  
Comment

Specific sections in each items should identify a section in the above document to link the retro sections to...its confusing because this is a entire new section that stands alone but its hard to connect the dots.

Agree: 0, Disagree: 0

## #153

Posted by **Anonymous** on **09/20/2017** at **3:24pm**  
Comment

Is this in reference to 11-200-8?

Agree: 0, Disagree: 0

## #154

Posted by **Anonymous** on **09/20/2017** at **3:21pm**  
Comment

This is confusing, is this exemption types? There should be a reference where in the above sections this is pointed to.

Agree: 0, Disagree: 0

## #155

Posted by **Anonymous** on **09/20/2017** at **2:57pm**  
Comment

What happens if agency does not revise exemption list after 5 years? Would their outdated list become null? Please clarify.

This timeline seems short. Some agencies have never completed a list and/or updated the original list.

Agree: 0, Disagree: 0

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 11 Severability

2 **§11-200-30 Severability**

3 If any provision of this chapter or the application thereof to any person or circumstance is held  
4 invalid, the invalidity shall not affect other provisions or applications of this chapter which can be  
5 given effect without the invalid provision or application; and to this end, the provisions of this  
6 chapter are declared to be severable.

7

8 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6, 343-8)

9

10 **Note**

11 Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact  
12 Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]  
13 Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the  
14 repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996  
15 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995,  
16 November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu  
17 Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii  
18 Tribune-Herald and Molokai Dispatch on October 12, 1995.

19

20 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It  
21 has not been compiled.

22

23