



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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Governor

Chairperson  
Puananionaona Thoene

Vice Chair  
Mary Begier

Members  
Roy Abe  
Stephanie Dunbar-Co  
Scott Glenn (*Ex Officio*)  
Maka'ala Ka'aumoana  
P. Ka'anohi Kaleikini  
I. Robin Kaye  
Theresita Kinnaman  
Robert Parsons  
Charles Prentiss  
Ron Terry  
Michael Tulang  
N. Mahina Tuteur

November 27, 2018 Meeting Minutes

Approved on December 18, 2018

Meeting held on  
Tuesday, November 27, 2018, 10:00 AM – 4:00 PM  
Capitol #1 Building  
Room 410, Executive Office of Aging  
250 South Hotel Street, Honolulu, Hawai'i 96813

## Members Present (12)

Puananionaona Thoene (Chairperson), Mary Begier (Vice Chair), Roy Abe, Stephanie Dunbar-Co, Scott Glenn (*ex officio*), Maka'ala Ka'aumoana, Robin Kaye, Tessie Kinnaman, Robert Parsons, Charles Prentiss, Ronald Terry, Michael Tulang

## Members Absent (2)

P. Ka'anohi Kaleikini, Mahina Tuteur

Environmental Council Deputy Attorney General (AG)  
Edward Bohlen

Office of Environmental Quality Control (OEQC) Staff  
Laura McIntyre, Les Segundo

## Public

Emily Gaskin (UH Law School), John Garibaldi (Watanabe Ing), Donna Wong (Hawai'i Thousand Friends)

Note: **Bolded** items indicate text from the agenda.

## 1. Call to order, roll call and quorum, introductions

- With a quorum of 10 members present, Chairperson Thoene called the meeting to order at 10:23 AM. Member Terry arrived at 10:25 AM and Member Kaye arrived at 10:40 AM, making quorum 12 members.
- Council, Counsel, OEQC staff, and members of the public introduced themselves.

## 2. Review and approval of prior meeting minutes

- MOTION: Member Ka'aumoana moved and Member Prentiss seconded to approve the meeting minutes for November 13, 2018, as amended:
  - Page 1, Item 3, bullet 2: "state" not "states"
  - Page 2, Item 5b: Make Member Abe's comment into two sentences ("...counsel. He stated that...").
  - Page 3, Item 7: Write out the abbreviations in bullets and better describe the items.
  - Table: Delete "as proposed by as" wherever it appears.Approved unanimously 11-0 (Member Kaye not present). Note: after the vote typos were discovered and corrected.

3. **Approve final amendments to proposed Chapter 11-200.1, Hawai'i Administrative Rules (HAR), entitled "Environmental Impact Statement Rules"**
  - a. **Discussion will be based on the following documents:**
    - i. **Version 1.0 Proposed HAR 11-200.1 Rules Standard Format**  
([http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Standard\\_Draft.pdf](http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Standard_Draft.pdf))
    - ii. **Version 1.0 Proposed HAR 11-200.1 Rules Ramseyer Format**  
([http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Ramseyer\\_Draft.pdf](http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Ramseyer_Draft.pdf))
    - iii. **Version 1.0 Proposed HAR 11-200.1 Rules Ramseyer Unofficial Format**  
([http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Ramseyer-Unofficial\\_Draft.pdf](http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Ramseyer-Unofficial_Draft.pdf))
    - iv. **Version 1.0 Proposed HAR 11-200.1 Rules Rationale**  
([http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Rationale\\_Draft.pdf](http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-Rules-Rationale_Draft.pdf))
    - v. **Written and Oral Comments on Draft 1.0** (<http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-All-Comments-2018-10-02.pdf>)
    - vi. **Report of the Environmental Council Permitted Interaction Group on Discussion Points for Consideration of Written and Oral Comments**  
(<http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-PIG-Report-Matrix-2018-10-25.pdf>)
    - vii. **Additional background on the Environmental Council's documents and process to date is available at** <http://health.hawaii.gov/oeqc/rules-update/>
  - b. **Pending approval of final amendments, the Environmental Council at a future meeting may agendaize a motion to approve:**
    - i. **Repealing Chapter 11-200, HAR, entitled "Environmental Impact Statement Rules"**
    - ii. **Promulgating Chapter 11-200.1, HAR, entitled "Environmental Impact Statement Rules"**
    - iii. **Supporting documents including response to comments and an updated Rationale that reflects any final amendments**

The Council resumed the motion begun and postponed at the November 13, 2018 meeting.  
NOTE: The attached table shows the motion outcomes from the November 13, 2018 meeting in gray and the motion outcomes from the November 27, 2018 meeting in white.

MOTION: Member Terry moved and Member Parsons seconded that the Council approve the proposed draft rules as final (Version 1.1) subject to amendments, with the final vote to be after the revised document is made available to the public.

DISCUSSION: The Council agreed to continue to proceed section by section asking if any member had amendments to offer.

Postponed Amendment 15: To adopt amendments to Section 17 as proposed by Scott Glenn, as amended by Charles Prentiss: Member Prentiss moved and Member Tulang seconded that the postponed motion be tabled until after the Council completed considering amendments from Section 19 until the end.

DISCUSSION: Council members expressed a desire to complete an initial pass through the draft rules before revisiting sections already discussed.

VOTE: Unanimously approved 12-0.

DISCUSSION: Director Glenn gave an overview of the handouts distributed with the meeting:

- Handout 1: Shows the amendments the Council adopted at the November 13, 2018 meeting for Sections 1-16 and 18. Amendments are highlighted in green.
- Handout 2: Member Prentiss' new proposed amendment to Section 17.
- Handout 3: Director Glenn's new proposed amendment to Section 17.
- Handout 4: Director Glenn's proposed amendments for the remainder of the rules from Section 19 on. His amendments are highlighted in yellow.

Member Terry agreed to lead the discussion section by section. Refer to the table beginning on page 4 for a record of the discussion and amendments. The table repeats the motions discussed and approved at the November 13, 2018 meeting and are distinguished by having a gray background. Comments from the public on amendments are included in the discussion of the respective amendment.

Following completion of discussion of all sections, the Council took up Amendment 15. The discussion and outcome are recorded in Amendment 15 of the table.

MOTION OUTCOME: The Council approved the motion unanimously 12-0.

The Council considered postponing the date the rules take effect so that agencies would have sufficient time to adjust their internal procedures. The Council thought an effective date of July 1, 2019, to coincide with the beginning of the fiscal year, would be sufficient. OEQC agreed to research whether that is possible to have a delayed effectiveness date from when the Governor signs rules into law.

Member Dunbar-Co left at 2:18 PM. Members Terry and Tulang left at 2:56 PM.

#### **4. Adjournment**

- The Council agreed to move its next meeting to December 18, 2018 instead of December 4, 2018 so that the OEQC would have sufficient time to prepare the final documents for the Council to vote on.
- Legislative Committee Chair Kaye cancelled the committee meeting and rescheduled it for December 18, 2018.
- Annual Report Committee Chair Parsons cancelled the committee meeting and rescheduled it for December 18, 2018. He requested that section authors have their drafts ready by the next meeting.
- Director Glenn reminded Council members to follow up with him about reappointments.
- Chair Thoene adjourned the meeting at 3:31 PM.

Note: The Council will break for lunch around the middle of the meeting when there is a suitable break in the discussion.

- The Council broke for lunch from 12:20-1:51 PM.

**Table of Amendments for the Motion to Adopt the Draft Proposed Rules, to be read with the attachments the Council used for decision-making  
 (Gray indicates motions from November 13, 2018; white indicates motions from November 27, 2018)**

<b>Amend No.</b>	<b>Rules Section 11-200.1-</b>	<b>Motion / Second / Vote</b>	<b>Amendment Rationale / Text / Discussion</b>
1.	1 Purpose	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Maka'ala Ka'aumoana <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the Permitted Interaction Group (PIG) but rephrase the part of paragraph (c) that leads into the list of three items. This change clarifies that the language is meant to express the purpose of the process. It more succinctly captures the goals and moves away from the word "shall".
2.	2 Definitions	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Mike Tulang <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG and make other amendments to the following definitions: <ul style="list-style-type: none"> <li>• Acceptance – Delete the last sentence because it is about process and is not intrinsic to the definition of acceptance itself.</li> <li>• Accepting authority – Insert "action" after "agency" and "applicant" to clarify the difference between agency and applicant regarding accepting authority.</li> </ul> Incorporate language raised by the PIG to the following definitions: Addendum, FONSI, Project, Project, and Trigger.
3.	3 Computation of Time	<b>Motion:</b> Ron Terry To adopt amendments as raised by the PIG. <b>Second:</b> Tessie Kinnaman <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG. Version 1.0 uses language from HAR Chapter 11-201, Environmental Council Rules of Practice and Procedure, however the statutory language is more succinct.
4.	4 Periodic Bulletin	<b>Motion:</b> Robin Kaye To adopt amendments as raised by the PIG. <b>Second:</b> Maka'ala Ka'aumoana <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG to clarify that the periodic bulletin is to be published electronically. People may contact the OEQC for a printed copy or access the bulletin at libraries, including printing it there.

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
5.	5 Filing Requirements for Publication and Withdrawal	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Ron Terry <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG but change the submittal deadline to 5 business days instead of 4 days. The current rule is 8 days. The proposed rules suggested 4 days with the intent to have the submittal deadline and publication date be within a week of each other, but due to staffing issues, the OEQC is concerned that it would not have the ability to make a 4-day turnaround, especially when there are many submittals to be processed and published.
	6 Republication of Notices, Documents, and Determinations	No motion, no amendment.	No discussion.
6.	7 Identification of Approving Agency and Accepting Authority	<b>Motion:</b> Scott Glenn To adopt amendments as raised by the PIG. <b>Second:</b> Robin Kaye <b>Vote:</b> Unanimously passed 11-0.	The term “proposed” is inappropriate here and should be removed.
7.	8 Application of Chapter 343, HRS, to Agency Actions	<b>Motion:</b> Ron Terry To adopt amendments as raised by the PIG. <b>Second:</b> Mike Tulang <b>Vote:</b> Unanimously passed 10-0. Charles Prentiss temporarily away.	Incorporate language raised by the PIG. The sentence at the end of (a)(2) is unnecessary. An EA or EIS is already required when a significant impact is anticipated. Item (a)(3) is unnecessary for an agency action because an agency proposing something related to this would already be using state or county lands or funds.
8.	9 Application of Chapter 343, HRS, to Applicant Actions	<b>Motion:</b> Robin Kaye To adopt amendments as raised by the PIG. <b>Second:</b> Tessie Kinnaman <b>Vote:</b> Unanimously passed 10-0. Charles Prentiss temporarily away.	Incorporate language raised by the PIG which shows recommended edits from the State Office of Planning to express the application of this trigger more accurately.

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
9.	10 Multiple or Phased Actions	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Robin Kaye <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG and delete “proposed by an agency or applicant” because this language is repetitive. An action means something proposed by an agency or applicant.
10.	11 Use of Prior Exemptions, Findings of No Significant Impact, or Accepted Environmental Impact Statements to Satisfy Chapter 343, HRS, for Proposed Activities	<b>Motion:</b> Ron Terry To adopt amendments as proposed by Scott Glenn, as amended by Ron Terry, as amended by Onaona Thoene. <b>Second:</b> Robin Kaye <b>Vote:</b> Unanimously passed 11-0.	Incorporate language raised by the PIG but correct the typos in the PIG report of paragraph (a).  Amendment by Ron Terry to paragraph (a): <ul style="list-style-type: none"> <li>• Change “considerable” to “careful” – not looking for quantity, but quality of analysis.</li> <li>• Change “pre-examination” to “examination”</li> <li>• Delete “similar to and” so the sentence reads “...substantially relevant...”</li> <li>• Re-order paragraph (a) and (b).</li> </ul> Amendment by Onaona Thoene: <ul style="list-style-type: none"> <li>• Move paragraph (a) to the end so that it becomes paragraph (d) to keep positive language up front.</li> </ul> Note that Sections 11 and 12 are separated because they have different purposes. Sections 11 is about the use is to see if something that is being proposed is already covered by Chapter 343, HRS. Section 12 is about incorporating material from previous Chapter 343, HRS, actions into a new action.
11.	12 Consideration of Previous Determinations and Accepted Statements	<b>Motion:</b> Ron Terry To adopt amendments as raised by the PIG. <b>Second:</b> Robin Kaye <b>Vote:</b> Unanimously passed 11-0.	The issue of “programmatically” versus “program” continues to be raised by commenters. To reduce confusion, remove the word “programmatically” and only use the word “program”.

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
12.	13 Significance Criteria	<p><b>Motion:</b> Robin Kaye            To adopt amendments as proposed by Scott Glenn.</p> <p><b>Second:</b> Rob Parsons</p> <p><b>Vote:</b> Unanimously passed 11-0.</p>	<p>Incorporate language raised by the PIG. The use of “substantial” is not defined nor given thresholds. The environmental review process rests on the rule of reason and court decisions that use phrases like “take a hard look”. HEPA has not historically used thresholds and introducing them at this point would require much more deliberation on the appropriate thresholds to set for when an exemption or EIS is warranted. Furthermore, having thresholds applicable to all islands and contexts is difficult. Using phrases like “substantial” allows for agencies to apply the law to the varied contexts of Hawai‘i.</p>
13.	14 Determination of Level of Environmental Review	<p><b>Motion:</b> Ron Terry            To adopt amendments as proposed by Scott Glenn.</p> <p><b>Second:</b> Mike Tulang</p> <p><b>Vote:</b> Unanimously passed 11-0.</p>	<p>Incorporate language raised by the PIG and apply the same edit to paragraph (a) to remove redundant language. Note that cumulative impacts are already tied into the concept of impact in the definition of “impact” so anytime there is use of the word “impact” then secondary and cumulative impacts are included. While the existing rules use these phrases as emphasis, these changes clarify language.</p>
14.	15 General Types of Actions Eligible for Exemption	<p><b>Motion:</b> Ron Terry            To adopt amendments as proposed by Scott Glenn.</p> <p><b>Second:</b> Robin Kaye</p> <p><b>Vote:</b> Unanimously passed 11-0.</p>	<p>Incorporate language raised by the PIG and amend other language. The language “meet the criteria for listing” introduces too much uncertainty into the exemption process as agency staff would likely defer to the State Historic Preservation Division to make a determination whether the proposed action met the eligibility criteria. Removing this language makes the standard clearer for agency staff. Removing this language means that structures that might be eligible could still be exempted, but the Council is also proposing that lists of exemption determinations be published every month so the public can monitor if a structure is inappropriately exempted.</p> <p>The other part of the amendment is to change “as set forth” in (b)(10)(D) to “as stated” to account for the list of examples of environmentally sensitive areas in section 11-200.1-13 to clarify when the affordable housing exemption would be unavailable.</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
	16 Exemption Lists	No motion, no amendment	The Council discussed the use of the word “activities” in this section, noting that the Council proposed amendments to previous sections to remove the word. The Council is trying to give direction to agencies when there is ambiguity about whether something is an action or not without creating rules for activities that are not actions. There are some things that should not even be discussed as actions, likely are not actions, but in an abundance of caution, agencies will want to put them on their exemption list. That is the purpose of Part 1 of the exemption list – to capture what agencies think are <i>de minimis</i> and gives the Council the opportunity to review what an agency considers <i>de minimis</i> .



Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
15.	17 Exemption Notice	<p><b>Motion:</b> Scott Glenn            To adopt amendments as proposed by Scott Glenn, as amended by Charles Prentiss.</p> <p><b>Second:</b> Rob Parsons</p> <p><b>Vote:</b> Postponed - unanimously 10-0.</p>	<p>Delete the sentence at the end of paragraph (b), delete all of paragraph (c), and change paragraph (d) to (c). The rules would still require agencies to obtain Council concurrence for their exemption list every 7 years, file exemption notices and produce them to the public and agencies upon request and provide a list of exemption determinations every month to the OEQC for publication in the bulletin. While no public comments on this section were received, OEQC is concerned that if too many lists no longer have concurrence, then it could be inundated with publishing 100s of exemption determinations. Furthermore, OEQC is concerned about the unknown effects on applicants who obtain exemption declarations when the 7 years passes and potentially be in limbo about the appropriate process steps to take for moving forward. Councilmembers expressed concern that this amendment would keep the process we have currently, which is burdensome to the public. Now, the public must request the exemption declaration from the agency, who can set up barriers to make it difficult for the public to access it, such as requiring someone on another island to come to O'ahu in person to receive a hard copy of the file. While the public could also file a UIPA (public records) request, that still does not make the exemption determination immediately available.</p> <p>Amendment by Charles Prentiss:            Amend the new paragraph (c) to require agencies to provide an electronic link in the list of exemption determinations to each exemption notice on file at the agency. This would absolve OEQC of publishing each exemption notice while still making the exemption notice immediately available to the public. This would also make the rules consistent with digitizing government. Councilmembers noted that this could still be a problem and a burden on agencies to set up such a system. The OEQC is the clearing house so should be the one with the link not the agency as the agency might not keep the link alive. OEQC's links stay up. OEQC though does not have the capacity to maintain a database of all agency exemption determinations. Making agencies set up online links to all of their exemption determinations may be a substantive change to the rules, requiring another round of public hearings. Perhaps the rules could tell the agency to make the exemption notice available electronically upon request. Member Prentiss and Director Glenn will suggest possible language at the next meeting.</p> <p>Council decided to postpone discussion and move on to the next section.</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
15. (Con't)	17	<b>Motion:</b> Mike Tulang To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Mary Begier <b>Vote:</b> Unanimously passed 12-0.	The Council resumed discussion of this item after completing discussion and amendment 29.  To remove language regarding consultation and publication requirements depending on the concurrence status of an agency exemption list, as discussed at the November 13, 2018 meeting. Also, require agencies to provide exemption notices electronically upon request.
16.	18 Preparation and Contents of a Draft Environmental Assessment	<b>Motion:</b> Scott Glenn To adopt amendments as raised by the PIG. <b>Second:</b> Rob Parsons <b>Vote:</b> Unanimously 8-0	Incorporate language raised by the PIG. The Council discussed the proposed requirement for adding in sea level rise exposure maps. Members expressed concern that the level of detail at the parcel level is inaccurate and unhelpful. Others noted that many of the maps such as flood zone and tsunami zone are not quite accurate at the small scale, however they are useful for the big picture and looking at indirect and cumulative impacts. Also, the maps are cited as examples and the map information is updated regularly.
17.	18 Preparation and Contents of a Draft Environmental Assessment	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Rob Parsons <b>Vote:</b> Unanimously 8-0	Retain the first sentence in paragraphs (b) and (c), and to delete the phrase in paragraph (c) regarding conceptual information. Comments recommended deleting these sentences as not necessary. However, it is important to state the difference between a program or project. Remove "conceptual information" in paragraph (c) because there is too much ambiguity around what is considered conceptual and how much one can predict for impacts in a meaningful way.
18.	19 Notice of Determination for Draft Environmental Assessments	<b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn. <b>Second:</b> Ron Terry <b>Vote:</b> Unanimously passed 12-0.	Incorporate language raised by the PIG and amend language to be consistent with the language in Section 18(d)(2). Change determination to FONSI because that is the only determination applicable in this context.

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
19.	20 Public Review and Response Requirements for Draft Environmental Assessments	<p><b>Motion:</b> Mary Begier To adopt amendments as raised by the PIG.</p> <p><b>Second:</b> Mike Tulang</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG which clarifies that commenters may send written comments to either the approving agency or applicant instead of requiring the comment to be sent to both.</p> <p>A member of the public commented on the 30-day response deadline, requesting allowing extensions and for comments received after the deadline to receive a response. The 30-day period is a challenge for entities that meet monthly such as O'ahu neighborhood boards.</p> <p>The Council replied that the statute sets the comment period and is silent on extensions. Some Councilmembers expressed concern that responding after the deadline would make the deadline meaningless. Agencies can choose to respond to comments received after the deadline and many choose to do so. A concern of this practice is that choosing to respond to comments after the deadline creates ambiguity about legal standing. To address the clear desire of the public and agencies for the ability to have additional opportunities for public comment, the Council introduced section 6 for republication of draft EAs, EISPNs, and draft EISs. Section 6 formalizes a method for achieving this goal while still respecting the intent and language of the statute.</p> <p>The Council is also compiling a list of public comments pertaining to the statute that the Council heard during rule-making. The Council will include in its list feedback that the public commented that the statutory comment period should be longer or more flexible.</p> <p>Also, the amendment incorporates edits to how to respond to substantive written comments.</p>
20.	21 Contents of a Final Environmental Assessment	<p><b>Motion:</b> Scott Glenn To adopt amendments as proposed by Scott Glenn.</p> <p><b>Second:</b> Charles Prentiss</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Amend language to be consistent with the language in Section 18(d)(2).</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
21.	22 Notice of Determination for Final Environmental Assessment	<p><b>Motion:</b> Maka'ala Ka'aumoana            To adopt amendments as proposed by Scott Glenn, as amended by Onaona Thoene.</p> <p><b>Second:</b> Tessie Kinnaman</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG and amend language to be consistent with the language in Section 18(d)(2).</p> <p>Delete the second paragraph (e) about EISPNs and move the sentence to the beginning of the first paragraph (e).</p>
22.	23 Consultation Prior to Filing a Draft Environmental Impact Statement	<p><b>Motion:</b> Mike Tulang            To adopt amendments as raised by the PIG.</p> <p><b>Second:</b> Maka'ala Ka'aumoana</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG to mirror language in other sections for consistency and make minor clarifications for readability.</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
23.	24 Content Requirements; Draft	<p><b>Motion:</b> Tessie Kinnaman To adopt amendments as proposed by Scott Glenn.</p> <p><b>Second:</b> Maka'ala Ka'aumoana</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG to mirror language in other sections for consistency, make (h) logically consistent on alternatives (a no action alternative cannot be an alternative that achieves the goals of the proposed action), clarify that the handouts to be included are ones made by the proponent, clarify that the consultation request letter could come from an agency or applicant, and make minor amendments for grammar.</p> <p>DISCUSSION AFTER VOTE ON SECTION 24</p> <p>A member of the public suggested deleting “reasonably foreseeable” so that (a) read: “...discuss all consequences of the action...”. A member of the public might not easily be able to know what is reasonable or case law to make a meaningful comment on whether a consequence is reasonable foreseeable.</p> <p>OEQC staff stated that the use of “reasonably foreseeable” refers to cumulative impacts. There is a need to identify the planning horizon and when potential impacts become unreasonable to be considered. Councilmembers shared their perspective of why they want to include the phrase “reasonably foreseeable”: During earlier versions, comments were made that “relevant and feasible” made it too easy for agencies and applicants to dismiss certain consequences. “Reasonable” is a standard used in law, such as in real estate law, and there is case law to guide understanding of the phrase. Also, “any” consequence raises concerns about being liable for that which could not have been known. The Council agreed that the OEQC should issue guidance to the public on how to understand this phrase.</p> <p>A member of the public asked why the Council was removing reference to cumulative and secondary impacts in (d). The Council said that the definition of “impacts” already includes secondary and cumulative. Every time the Rules use “impact”, it means direct, indirect (i.e., secondary), and cumulative. The removal is a general edit the Council is making to make the rules easier to read without watering down the standard.</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
24.	25 Public Review Requirements for Draft Environmental Impact Statements	<p><b>Motion:</b> Mary Begier To adopt amendments as raised by the PIG.</p> <p><b>Second:</b> Mike Tulang</p> <p><b>Vote:</b> Unanimously passed 11-0. Charles Prentiss temporarily away.</p>	<p>Incorporate language raised by the PIG which clarifies that commenters may send written comments to either the approving agency or applicant instead of requiring the comment to be sent to both.</p>
25.	26 Comment Response Requirements for Draft Environmental Impact Statements	<p><b>Motion:</b> Maka'ala Ka'aumoana To adopt amendments as raised by the PIG.</p> <p><b>Second:</b> Mary Begier</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG which clarifies that the comment response requirements are as set forth in section 25. Also, the amendment mirrors edits to section 20 on how to respond to substantive written comments.</p> <p>The word "verbatim" was removed from (d) so that a response could indicate where in the document the change was made without having to reproduce it in the letter. Councilmembers believe that preparers were resistant to making changes based on comments because it was too difficult to track the changes made in the final EIS with all the places in the comment responses it would have to be repeated. The Council intends for increased revisions from public comments by allowing preparers to refer in the comment letter to the section in the final EIS. The OEQC should issue guidance document to clarify what is considered substantive, though that can vary by action.</p>
26.	27 Content Requirements; Final Environmental Impact Statement	<p><b>Motion:</b> Mary Begier To adopt amendments as raised by the PIG.</p> <p><b>Second:</b> Charles Prentiss</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised by the PIG to standardize use of the defined term "EIS public scoping meeting".</p>

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
27.	28 Acceptability	<p><b>Motion:</b> Scott Glenn            To adopt amendments as raised by the PIG.  <b>Second:</b> Maka'ala Ka'aumoana  <b>Vote:</b> Unanimously passed 12-0.</p>	<p>Incorporate language raised to re-letter paragraphs and edits to remove reference to that approving agency. For an EIS, the approving agency is the accepting authority, so references to the approving agency are redundant.</p> <p>The Council discussed the sequence of paragraphs and whether it made sense to reorganize them. Director Glenn offered to propose amendments to this effect following the lunch break.</p>
28.	29 Appeals to the Council	<p><b>Motion:</b> Scott Glenn            To adopt amendments as proposed by Scott Glenn.  <b>Second:</b> Charles Prentiss  <b>Vote:</b> Unanimously passed 12-0.</p>	<p>The Council discussed cleaning up the approving agency accepting authority issue. This is an admin remedy only available to applicants, not agencies. The Council proposed to change approving agency to accepting authority. Any appeal would be to the Council.</p>
	30 Supplemental Environmental Impact Statements	No motion, no amendment.	No discussion.
29.	31 National Environmental Policy Act Actions; Applicability to Chapter 343	<p><b>Motion:</b> Mary Begier            To adopt amendments as raised by the PIG.  <b>Second:</b> Mike Tulang  <b>Vote:</b> Unanimously passed 12-0.</p>	<p>Amend the section to emphasize that NEPA documents must consider cultural impacts from a Hawaii perspective to be considered for determinations pursuant to Chapter 343, HRS.</p>
	32 Retroactivity	No motion, no amendment.	No discussion.
	33 Severability	No motion, no amendment.	No discussion.

Amend No.	Rules Section 11-200.1-	Motion / Second / Vote	Amendment Rationale / Text / Discussion
30.	28 Acceptability	<p><b>Motion:</b> Scott Glenn            To adopt amendments as proposed by Scott Glenn, subject to allowing further edits to non-substantive amendment by counsel and the Director of OEQC.</p> <p><b>Second:</b> Charles Prentiss</p> <p><b>Vote:</b> Unanimously passed 12-0.</p>	<p>During the break, Director Glenn reorganized the paragraphs of section 28 based on discussion during amendment 27.</p> <p>Paragraphs (a), (b), (g) and (f) apply to both agencies and applicants. Paragraphs (c) and (d) apply to only agencies, while (e) and (f) apply to applicants, but (d) does not specify either. Director Glenn proposed reordering the paragraphs to consolidate the language specific to applicants into one place, language specific to agencies in one place, and language specific to both in one place.</p>