

From: Merz, Jeff
To: [HI Office of Environmental Quality Control](#)
Subject: one change in HAR 11-200
Date: Monday, July 31, 2017 3:16:43 PM

The revised HAR 11-200 changes look good, Scott.

One typo –

Page 9-4, line 40 “instead” not “install”.

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**Comments on the
Report of the Environment Council Permitted Interaction Group
Preliminary Draft of Proposed Revisions to Hawai'i
Administrative Rules Title 11 Department of Health
Chapter 200 Environmental Impact Statement Rules**

August 1, 2017

Aloha,

The Good Shepherd Foundation is happy to see that the OEQC is addressing the updating of HAR 11-200. We hope the following comments help improve this important document.

1. Publication of Exemption Notices should be mandatory in the Periodic Bulletin.

Section (g) on page 11-200-8(g) on page 25 it states:

Each agency shall maintain records of such¹²⁸ actions, called exemption notices,¹²⁹ which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency's means or publication in the bulletin, whichever of the two is earliest.

I applaud the Council addressing the need for clear dates for legal challenges. However, I do suggest that publication in the Periodic Bulletin become mandatory for these exemption notices, and that the date of publication in the Periodic Bulletin be used as the sole standard for legal review.

The public should not be expected to regularly check government agency websites or look at the minutes of agency meetings to know that an exemption was issued for a project that the public may not have known was exempted, or that it was even planned. The advantage of having the Periodic Bulletin is that it is the one-stop shop for Hawaii's environmental notices. The public should be able to rely on the Periodic Bulletin to have information about all HRS 343 environmental documents, whether these are an EA, EIS, or a notice of exemption.

There should also be one, clear way to get this information announced to the public for legal review purposes. The current wording of this section would allow agencies to either publish exemption notices themselves with or without the OEQC, or not publish the exemption notice themselves and instead ask the OEQC to do it. This will create confusion if we cannot trust that

information about exempted projects will be in the Periodic Bulletin. "Sometimes it is, sometimes it isn't," will weaken the value of, and trust in, the Periodic Bulletin.

There will also be questions as to the criteria used by an agency in how to announce an exemption notice. Which exempted actions will they announce in the minutes of a meeting versus in the Periodic Bulletin? I can hear people already arguing that agencies tried to hide the exemption in the meeting minutes, which virtually nobody in the public knows about, rather than making it public with a notice in the Periodic Bulletin.

There needs to be a clear date for legal actions to begin, which is why there needs to be one, unambiguous, reliable source of information — the Periodic Bulletin.

You are already saying that "An agency may request the office to publish the exemption notice in the periodic bulletin." Since you are accepting the burden of these publication requests, hopefully having all exemption notices published in the Periodic Bulletin is not overly burdensome. A separate section dedicated to exemption notices would be very helpful to the public.

Therefore, I suggest you change the wording of this section to:

Each agency shall maintain records of such¹²⁸ actions, called exemption notices,¹²⁹ which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency ~~may~~ shall submit to the office the exemption notice for publication in the Periodic Bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~

2. What are "cultural practices of the State"?

In the definition of "significant effect" on page 12, the proposed addition — "cultural practices of the community and State" — is being added to comply with Act 50. However Act 50 does not make clear what it meant by the term "State".

Act 50 states,

DESCRIPTION:

Amends the environmental impact statement law by amending the definition of "environmental impact statement" or "statement" to include effects on the cultural practices of the community and State. Also amends the definition of "significant effect" to include adverse effects on cultural practices. (HB2895 HD1)

It's clear what the cultural practices of a community may involve. What are the cultural practices of the "State"?

If by "State" it is meant a political entity, then are we supposed to consider the government's "culture"? How is that defined?

If by "State" it is meant the Hawaiian Islands, which are populated by multiple cultures and communities, what would the culture of the "State" be?

I realize that this is an issue to be addressed with Act 50. However, by incorporating that language into 11-200, you take the ambiguity of that language into this administrative rule.

Perhaps to mitigate this, you can simply change the term "cultural practices of the community and State" to "cultural practices in compliance with Act 50." This would bring the issue back to Act 50, instead of leaving it to you to define the culture of the "State" for 11-200.

This term is also used in 11-200-12(b)(4) on page 42.

3. PIG? OMG!

I don't know what a Permitted Interaction Group means, and can probably come up with some amusing guesses. But the acronym of PIG beats it all. "The PIG drafted language...Following the Council's establishment of the PIG, the PIG set a meeting...The PIG reviewed the 2012 draft...the Council agreed that the PIG could present its report..."

Was this a deliberate attempt at a joke? It certainly doesn't help this report seem serious, coming, as it is, from a PIG. As an anthropologist I study language, among other things, and the use of the term PIG does not help promote the recommendations that this PIG is suggesting. As soon as the Council suggested calling the group PIG someone involved should have squealed.

I hope these comments helps you improve this important administrative rule.

Sincerely,

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Comments on Draft rules.

Chuck Prentiss (08/08/2017)

1. Page 25, Para. (f), line 3:
After "concurrence" add "or review".

Reason: Current rules call for a periodic review of lists. Our procedure is to review exemption lists older than five years. Those lists that do not need any changes do not need another Council concurrence, and are given a reviewed date. These lists are considered current even though the concurrence date has not changed.

2. Add a note somewhere in 11-200-8 as follows (or similar):
"Exemption lists existing prior to the adoption of these revised rules may continue to refer to "types" as "classes" until the list is revised."

Reason: If this is not done, all exemption lists would require updating to change "classes" to "types." Given Council and OEQC resources, updating all lists at once, is not feasible.

Additional Comments : EC's PIG Draft, VR 0.1

§11-200-9

Page 27: (a) (4) Does the agency (proposing or accepting) need to explain/inform if it issues a FONSI?

Page 29: (1) Do we need to expand/define “consult with” in the context of “consult with ... citizen groups and individuals...”. What would satisfy this requirement, and how should it be reported? For example, would a simple list of groups and individuals contacted be sufficient, or would there need to be more information, such as dates of meetings, what was discussed, who participated, etc. Would one community meeting satisfy this requirement?

§11-200-10

Page 35: The initial sentence makes this appear to be applicable just to “proposing agency or approving agency” but not to applicants. Yet, (1) says “Identification of applicant or proposing agency.” Perhaps the first sentence should include “applicant.”

Page 35: (3) “Identification of agencies, citizen groups and individuals consulted in preparing the assessment.” Similar to comments above, is “identification” sufficient here? Shouldn’t there be more than a simple listing of names?

§11-200-11.1

Page 37: (b) Do we need to be more precise in terms of time limits: "The proposing agency or approving agency shall file the notice and supporting draft EA with the office as early as possible after the determination is made."

§11-200-11.2

Page 39: (2) Is “Reviewing any public and agency comments” sufficient, or should it require “reviewing and responding to” or in some way indicating that those comments were incorporated in the determination (especially if it's a FONSI?)



§11-200-14

Page 45: This assumes that the preparing agency is responsible for 1-7, but would it be helpful to include a statement of who is actually responsible for 1-7; e.g., “The EIS process shall involve at a minimum the preparing party” Or, does/can the accepting authority conduct the scoping meeting?

Page 45: (2) Requiring "no fewer than one" public scoping meeting is a good addition. Can we strengthen this without being too prescriptive? For example, is there a well-thought-out guide to these kinds of meetings for which we could footnote a link; is there a website that would be helpful? Are there minimum components for a public scoping meeting, such as making sure it is recorded, or that it's in the affected community? [So many “public” meetings for issues that directly impact Lana'i are held solely on Maui. For example, see DOBOR's recent public meeting schedule for review of its draft revised rules.]

§11-200-15

Page 46: (b) and (e) We need to find a way to honor and support the value of oral comments. Perhaps it's requiring a narrative that captures the nature of those oral comments, or acknowledges those oral comments that appear to reflect a consensus????

§11-200-18

Page 55: “The final EIS shall consist of:” Should we also require a narrative report on the (now required) Public Scoping meeting?

§11-200-XX

Page 68: Who/which agency determines if a PEIS is required, rather than an EIS?



Report of the Environmental Council Permitted Interaction Group

Preliminary Draft of Proposed Revisions to Hawai'i Administrative Rules Title 11 Department of Health Chapter 200 Environmental Impact Statement Rules

1 Prepared for the July 27, 2017 Environmental Council Meeting

2 Prepared by the Environmental Council Permitted Interaction Group ("PIG") established on
3 February
4 23, 2016, with the support of the Office of Environmental Quality Control. The Permitted
5 Interaction Group members are: Scott Glenn, Onaona Thoene, Ron Terry, and Mahina Tuteur.
6 Deputy Attorney General Diane Agor advised the Permitted Interaction Group.

6 **Background**

7 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter
8 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled
9 in 1996. An amendment to add an exemption class for the acquisition of land for affordable
10 housing was added in 2007, although it has not been compiled ~~with into the rest of~~ the rules.

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11 In 2011, the public formally petitioned the Environmental Council (Council) to update HAR
12 Chapter 11-200. The Council initiated consultation with state and county agencies for
13 recommendations on issues to address and language revisions. In 2012, the Council released a
14 preliminary draft of revisions to HAR Chapter 11-200 (referred to as "Version 1") that
15 incorporated proposed revisions from previous Council efforts and issues raised by agencies
16 and the public. The Council also distributed an Excel file called a "comment matrix" to receive
17 feedback on Version 1. Agencies and the public (including applicants, consultants, and nonprofit
18 organizations) submitted comments via the comment matrix. The Council organized the
19 feedback into a master comment matrix and tasked the Rules Committee with addressing the
20 feedback and making revisions to the language of HAR 11-200. The Rules Committee met
21 regularly over the
22 course of 2012-2014 to revise Version 1. However, due to various administrative challenges,
23 including maintaining quorum, the Council was not able to complete its work.

Commented [s1]: Is this "former" and/or "current" applicants?

23 In February 2016, following Governor Ige's appointment of seven members to the Council, the
24 Council addressed these challenges and resumed moving forward on revisions to HAR
25 Chapter
26 11-200. As part of this effort, the Council wanted to recognize the extensive outreach and
27 drafting that the 2012 Council conducted.

27 At the February 23, 2016 Council meeting, the Council established a Permitted Interaction
28 Group (PIG) to draft revisions to HAR Chapter 11-200. The PIG was to investigate and consider

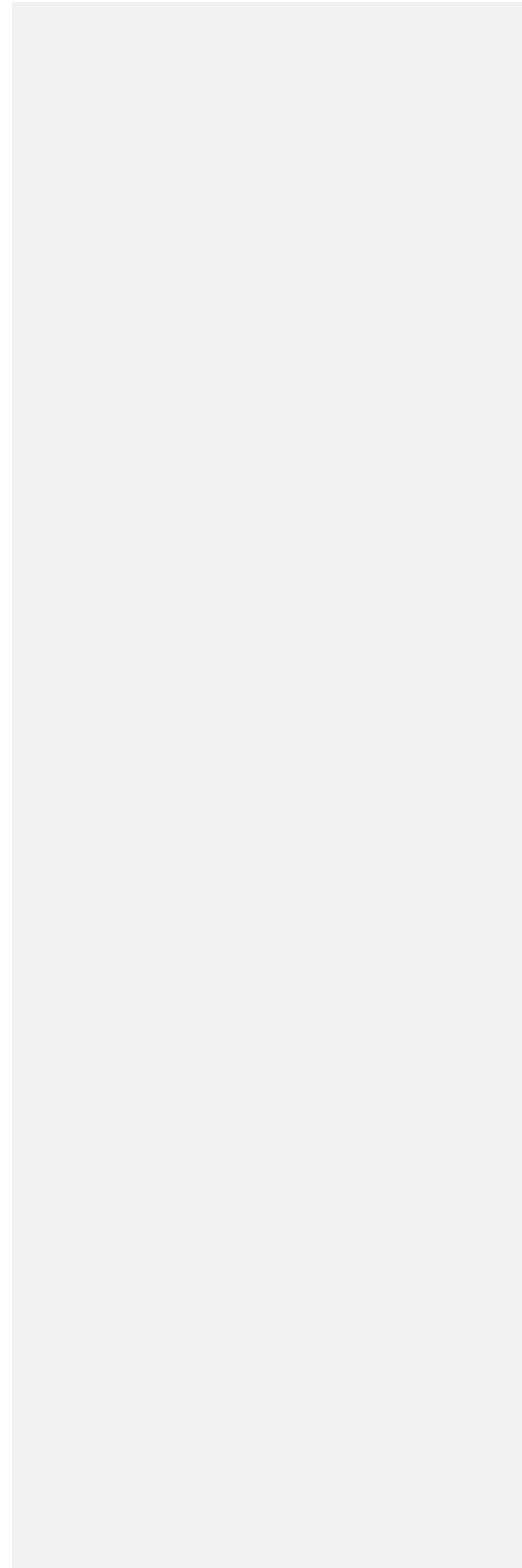
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Version 0.1

July 27, 2017



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

1 specific language for inclusion in HAR Chapter 11-200, which would not be used for the purpose
2 of
3 decision making, but would be brought to the Rules Committee for its to consider ation and
4 decide sion whether to forward
5 making to make recommendations to the EC.

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4 **Permitted Interaction Group Principles**

5 The PIG drafted language within the context of the principles established by the Council:

- 6 • Be consistent with the intent and language of Hawai'i Revised Statutes Chapter 343.
- 7 • Align statute, case law, and practice wherever feasible.
- 8 • Increase clarity for in the process and requirements.
- 9 • Use the National Environmental Policy Act for language and guidance where applicable.

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10 **Permitted Interaction Group Process**

11 Following the Council's establishment of the PIG, the PIG set a monthly or biweekly meeting
12 schedule to review the previous Council's work. The PIG reviewed the 2012 draft rules language,
13 public comments in the comment matrix the 2012 Rules Committee produced, and responses to
14 the public comments that the Rules Committee developed over 2012-2014. The PIG
15 categorized the comment matrix into two groups: 1) comments resolved and direction provided;
16 and 2) outstanding comments still needing policy direction or draft language. For the former
17 group, the PIG integrated the language the resolved language into a draft it called Version 1.1.
18 For the second group, the PIG developed language in consultation with the Rules Committee
19 and the Office of Environmental Quality Control (OEQC). Further, the PIG developed language
20 in response to requests from the Rules Committee and OEQC for issues that arose since 2012.
21 At the July 11, 2017 meeting, the Council agreed that the PIG could present its report directly to
22 the Council at its, it's the Council's next meeting.

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23 **Permitted Interaction Group Recommendations**

24 This report synthesizes Version 1.1 with 1) additional revisions the PIG made to address
25 unresolved comments from the 2012 Council; 2) direction the Rules Committee gave provided
26 comments or recent issues, and 3) current topics the OEQC raised.

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27 The following revisions are the recommendations of the PIG to the Council as a baseline
28 starting point for discussion going forward. Among the themes addressed are:

- 29 • "Housekeeping" - revisions that modernize grammar and clarify language.
- 30 • Clarifying roles and responsibilities at various stages of environmental review.
- 31 • Modernizing submittals and deadlines to recognize electronic communication.
- 32 • Setting clearer thresholds for exemptions and the role of exemption lists.
- 33 • Clarifying when and how to proceed to directly preparing an EIS instead of an EA.
- 34 • Clarifying when and how to do programmatic EISs and supplemental EISs.
- 35 • Responding to comments in EAs and EISs.
- 36 • Conducting joint federal-state environmental review.

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HAR Chapter 11-200 Environmental Impact Statement Rules

1 Subchapter 1 Purpose

§11-200-1 Purpose

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

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

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9 ¹ Housekeeping.

10 ² Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
11 housekeeping purposes, unless otherwise noted.

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1 Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

2 As used in this chapter:

3 "Acceptance" means a formal determination of ~~acceptability~~³ that the document required to be
4 filed pursuant to ~~C~~chapter 343, HRS, fulfills the definitions and requirements of an environmental
5 impact statement (EIS),⁴ ~~adequately describes identifiable environmental impacts, and~~
6 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~
7 ~~by section 11-200-23.~~⁵ Acceptance does not mean that the action is environmentally sound or
8 unsound, but only that the document complies with ~~C~~chapter 343, HRS, and this chapter. A
9 determination of acceptance is required prior to implementing or approving the proposed action.

10 "Accepting authority" means the ~~final~~⁶ official who⁷ or agency that ~~determines the acceptability of~~
11 ~~the EIS document makes the determination that a final EIS required to be filed pursuant to~~
12 Chapter 343, HRS, fulfills the definitions and requirements of an EIS⁸.

13 "Action" means any program or project ~~to be initiated~~ proposed by an agency or applicant.

14 "Addendum" means an attachment to a draft EA ~~environmental assessment~~ or draft
15 ~~environmental~~
16 ~~impact statement EIS~~⁹, prepared at the discretion of the proposing agency or approving agency,
17 and distinct from a supplemental statement, for the purpose of disclosing and addressing
18 clerical errors such as inadvertent omissions, corrections, or clarifications to information already
19 contained in the draft ~~environmental assessment EA~~¹⁰ or the draft ~~environmental impact~~
20 ~~statement EIS~~ already filed with the office of environmental quality control.

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

22 ³ Housekeeping.

23 ⁴ Housekeeping.

24 ⁵ Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty
25 that other EIS sections may not apply because they are omitted in the definition.

26 ⁶ Removes "final" because it does not contribute additional meaning to the definition.

27 ⁷ Housekeeping.

28 ⁸ Clarifies that the accepting authority role is about the acceptability about a final EIS.

29 ⁹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
30 housekeeping purposes, unless otherwise noted.

31 ¹⁰ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for

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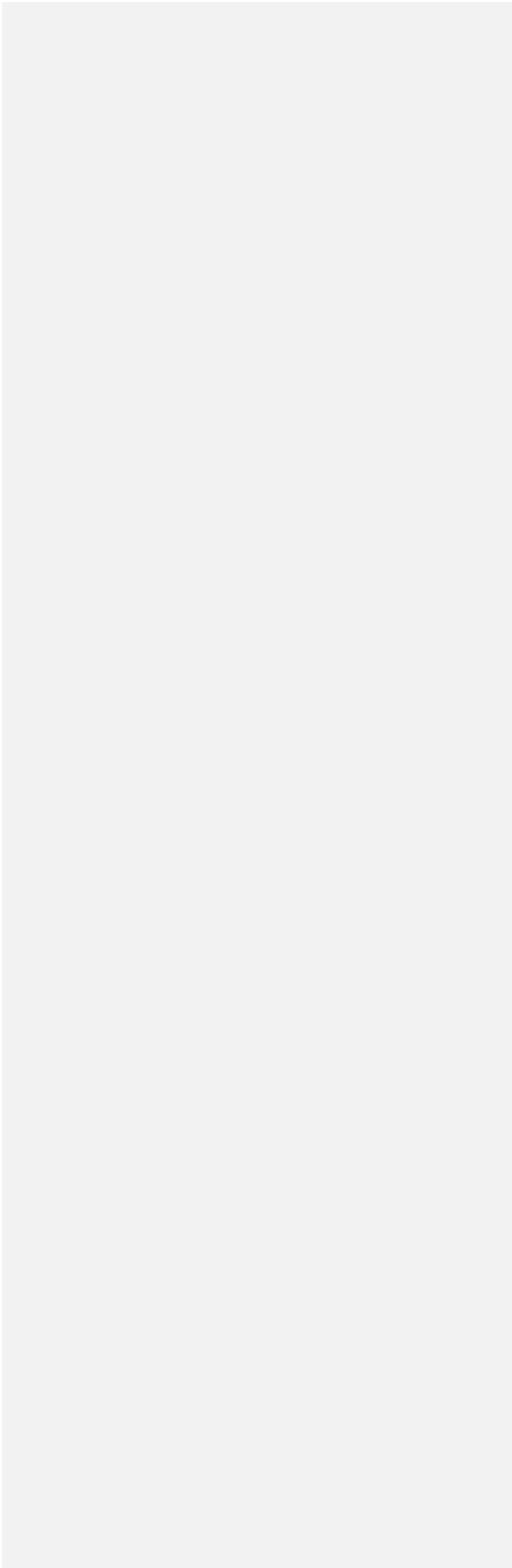
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1 "Applicant" means any person ~~who, that,~~ pursuant to statute, ordinance, or rule, officially requests
2 approval from an agency for a proposed action.

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3 "Approval" means a discretionary consent required from an agency prior to actual¹¹
4 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~
5 ~~recommendation from an agency for which judgment and free will may be exercised by the~~
6 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~
7 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~
8 ~~by law or rule without the use of judgment or discretion.~~¹²

9 "Approving agency" means an agency that issues an approval prior to actual¹³ implementation
10 of an applicant's¹⁴ action, determines the need for an EA or EIS, and issues the exemption,
11 FONSI, or acceptance determination.¹⁵ The approving agency may be an accepting authority for
12 an applicant's final EIS.¹⁶

Commented [s4]: This is so confusing and sounds vaguely to be entirely self-serving. Perhaps a parenthetical i.e. would be useful.

13 "Concurrence" means the discretionary consent of the environmental council to an agency
exemption list.¹⁷

14 "Council" or "EC" means the environmental council.

15 "Cumulative impact" means the impact on the environment ~~which that~~ results from the
16 incremental impact of the proposed action when added to other past, present, and reasonably
foreseeable
17 future actions regardless of what agency or person (s) has undertaken or undertakes such other
actions. Cumulative
18 impacts can result from individually minor but collectively significant actions taking place over a
19 period of time.

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20 "Discretionary consent" means a consent, sanction, or recommendation from an agency for which
21 judgment and free will may be exercised by the issuing agency, as distinguished from a
22 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an

23²⁰ ¹¹ Does not add meaning to sentence so removing the word.

24²¹ ¹² Removed "discretionary consent" from the definition and made it a standalone definition that mirrors the
25²² statute.

26²³ ¹³ Does not add meaning to sentence so removing the word.

27²⁴ ¹⁴ Approving agencies are only in the case of applicants.

28²⁵ ¹⁵ The approving agency makes the decision about level of review and if the applicant has satisfied HRS

29²⁶ Chapter 343.

30²⁷ ¹⁶ In the case of applicants, the approving agency is also the accepting authority. This adds clarification to
31²⁸ the definition.

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3229¹⁷ Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary
3330 because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is
3431 not an approval because it does not apply to a specific project.

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1 agency upon a given set of facts, as prescribed by law or rule, without the use of judgment or
2 discretion.¹⁸

3 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a
4 proposing agency or an approving agency for public review and comment when that agency
5 anticipates a ~~negative declaration finding of no significant impact (FONSI)~~¹⁹ determination.

6 "Effects" or "impacts" as used in this chapter are synonymous. Effects (or impacts) may include
7 ecological
8 effects (such as the effects on natural resources and on the components, structures, and
9 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic
10 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate or
11 delayed²⁰. Effects (or impacts) may also include those effects resulting from actions ~~which that~~
12 may have.
13 both beneficial and detrimental effects, even if on balance the agency believes that the effect
14 will be beneficial.

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

24 "Emergency action" means ~~an action to prevent or mitigate loss or damage to life, health,~~
25 ~~property, or essential public services in response to a sudden unexpected occurrence~~
26 ~~demanding such immediate action,~~ a project or program that normally would be subject to the
27 provisions and requirements of C
28 chapter 343, HRS, but is ~~exempted~~not because of a state of emergency declared by the
29 governor.²¹

30 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,
31 and social conditions that exist within the area affected by a proposed action, including land,
32 human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of
33 historic, cultural,²² or aesthetic significance.

34 ¹⁸ Definition removed from "approval" and made stand-alone. Mirrors HRS § 343-2 language and expands
35 on ministerial definition (which is existing language in HAR § 11-200-2).

36 ¹⁹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
37 housekeeping purposes, unless otherwise noted.

Commented [s5]: Never by an applicant?

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Commented [s7]: Is it really necessary to say this? It almost leaves one with the message, then why bother? Isn't it sufficient that the objectives and requirements of the scoping meeting are fully laid out?

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Commented [s8]: Should this include "health" since you listed health in "impacts"? I.e., "all of the physical (including health), economic...."

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Environmental Council Permitted Interaction Group Report

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

- 3325²⁰ Incorporates the language from the definition of “environmental impact” which is proposed for deletion.
- 3426²¹ Redefines an emergency action to be an action undertaken during a particular emergency proclamation issued by the governor.
- 3527²² Adds cultural to the definition of environment to make the definition in line with Act 50 (2000).

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1 "Environmental assessment" or "EA"²³ means a written evaluation to determine whether an
2 action may have a significant environmental effect that serves to provide sufficient evidence
3 and analysis to determine whether a proposed action may have a significant environmental
4 effect.²⁴ ~~It~~
5 ~~T~~together with a FONSI, it satisfies ~~C~~chapter 343, HRS, when no EIS is necessary, and facilitates
6 preparation of an EIS when one is necessary and the proposing agency ~~or applicant~~, based on its
7 judgment
8 and experience, has not previously determined that it would proceed directly with the
9 preparation of an EISPN, or the agency, based on its judgment and experience, has not
10 previously authorized the applicant to choose to proceed directly with the preparation of an
11 EISPN.²⁵

12 "Environmental impact" means an effect of any kind, whether immediate or delayed, on any
13 component of the environment.²⁶

14 "Environmental impact statement," "statement," or "EIS" means an informational document
15 prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with
16 subchapter 7 of this chapter.²⁷ The initial statement EIS²⁸ filed for public review shall be referred
17 to as the draft environmental impact statement EIS and shall be distinguished from the final
18 environmental impact statement EIS, which is the document that has incorporated the public's
19 comments and the applicant's or agency's [?] responses to those comments. The final
20 environmental impact statement
21 EIS is the document that shall be evaluated for acceptability by the respective²⁹ accepting
22 authority.

23 "Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to
24 prepare environmental assessments, for a class of actions, based on a determination by the
25 proposing agency or approving agency that the class of actions will probably have a minimal or
26 no significant effect on the environment.³⁰

27 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a
28 public action, or the agency with the power of approval, in the case of a private action, when it
29 has determined that the proposed project action is an exempt or emergency project action.³¹

²³ Adds common abbreviation for use throughout the rules.

²⁴ 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.

²⁵ Incorporates direct-to-EIS pathway into definition of an EA.

²⁶ Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment"
provides more clarity than this definition.

²⁷ Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

²⁸ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for

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Commented [s9]: In 2009 C&C went straight to an EISPN, recognizing that Big Wind would never qualify for an EA, no agency was involved in this determination.

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Commented [s10]: Is this code for "governmental"?

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~~3433~~ housekeeping purposes, unless otherwise noted.

~~3534~~²⁹ Unnecessary language so recommend removing.

~~3635~~³⁰ Removes the definition because the concept of "classes of actions" is removed in section 8.

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1 "Final environmental assessment" means either the ~~environmental assessment EA~~ submitted by
2 a proposing agency or an approving agency following the public review and comment period for
3 the draft ~~environmental assessment EA~~ and in support of either a FONSI (finding of no significant
4 impact) or a ~~preparation notice~~
5 an EISPN³¹ determination; or the environmental assessment submitted by a proposing agency
6 or an approving agency subject to a public consultation period when such an agency clearly
7 determines at the outset that the proposed action may have a significant effect and hence will
require the preparation of a statement.

8 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an
9 EA that an action not otherwise exempt from Chapter 343, HRS does not have the potential for a
10 significant effect on the
11 environment and therefore does not require the preparation of an EIS. A FONSI is required prior
12 to implementing or approving the proposed action.³²

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

14 "National Environmental Policy Act" or "NEPA"³³ means the National Environmental Policy Act of
15 1969, Public Law 91-190, 42 U.S.C. §4321-4347, as amended.

16 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~
17 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~
18 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~
19 ~~A negative declaration is required prior to implementing or approving the action.~~³⁴

20 "Office" means the office of environmental quality control.

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

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

25 "Power generating facility" means:

26 1. A new, fossil-fueled, electricity-generating facility, where the electrical output
rating of the new equipment exceeds 5.0 megawatts; or

27 ³¹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
28 housekeeping purposes, unless otherwise noted.

29 ³² Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

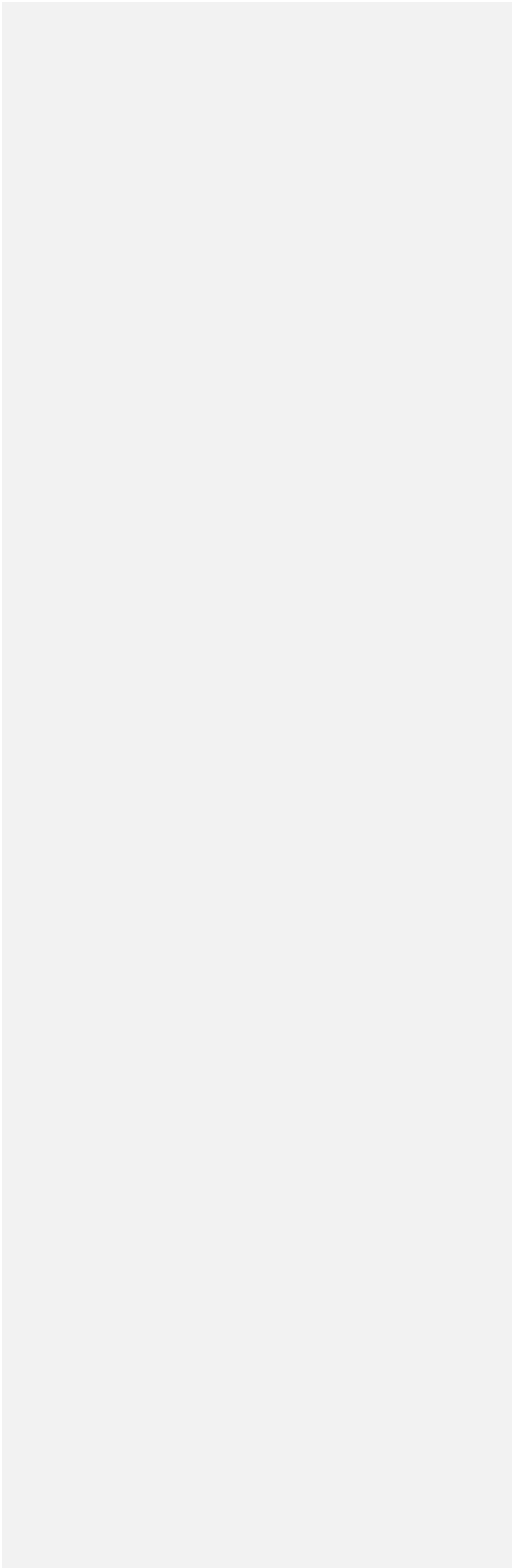
30 ³³ Adds common abbreviation for use throughout the rules.

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31 ³⁴ Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".



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1 2. An expansion in generating capacity of an existing, fossil-fueled,
2 electricity-generating facility, where the incremental electrical output rating of the
3 new equipment exceeds 5.0 megawatts.³⁵

4 "Preparation notice," or "EIS preparation notice,"³⁶ or "EISPN"³⁷ means a determination based
5 on an environmental assessment that the subject that an³⁸ action may have a significant effect
6 on the environment and, ~~therefore,~~ will ~~therefore~~ require the preparation of an environmental
7 ~~statement~~ EIS, based on either an EA or an agency's judgment and experience that the
8 proposed action may have a significant effect on the environment; ~~an EIS is and therefore~~
9 ~~authorized without first requiring an EA~~
10 ~~be prepared without first requiring an EA.~~³⁹

11 "Primary impact," or "primary effect," or "direct impact,"⁴⁰ or "direct effect" means effects which
12 that ~~are~~ will be caused by the proposed action and occur at the same time and place.

13 A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a
14 number of separate actions in a given geographic area which, if considered singly, may have
15 minor impacts, but if considered together may have significant impacts; (2) a sequence of
16 actions contemplated by a single agency or applicant; (3) separate actions having generic or
17 common impacts; (4) an entire program or plan having wide application that could ~~or restricting~~
18 the range
19 of future alternative policies or projects, including new or significant changes to existing land use
20 plans, development plans, zoning regulations, or agency comprehensive resource management
21 plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)
22 implementation of a single project or program over a large geographic area.⁴¹

23 "Proposing agency" means any state or county agency that proposes an action under Chapter
24 343, HRS.⁴²

25 "Secondary impact," or "secondary effect," or "indirect impact,"⁴³ or "indirect effect" means
26 effects which ~~that~~ are caused by the proposed action and are later in time or farther removed in
27 distance,
28 but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and

29 ³⁵ Adds definition from HRS § 343-2.

30 ³⁶ Housekeeping.

31 ³⁷ Adds common abbreviation for use throughout the rules.

32 ³⁸ Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS
33 language.

34 ³⁹ Adds the direct-to-EIS pathway to the definition of an EISPN.

35 ⁴⁰ Housekeeping.

36 ⁴¹ Adds a definition to go along with new sections on how to do environmental review for an action this is
37 a "program". Most environmental review focuses on projects. By providing language on a programmatic

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[3534](#) look, the rules give direction on how to address projects or programs at risk of being viewed as

[3635](#) segmented and acknowledges the tension between earliest practicable time with project specificity.

[3736](#)⁴² Added definition because the term is used frequently throughout the rules.

[3837](#)⁴³ Housekeeping.

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1 other effects related to induced changes in the pattern of land use, population density or growth
2 rate, and related effects on air, ~~and water,~~⁴⁴ and other natural systems, including ecosystems.

3 "Significant effect" or "significant impact" means the sum of effects on the quality of the
4 environment, including actions that irrevocably commit a natural resource, curtail the range of
5 beneficial uses of the environment, are contrary to the ~~state's~~ State's⁴⁵ environmental policies or
6 long-term environmental goals and guidelines as established by law, ~~or~~⁴⁶ adversely affect the
7 economic or social welfare, cultural practices of the community and State,⁴⁷ or are otherwise set
8 forth in section 11-200-12 ~~of this chapter~~⁴⁸.

9 "Substantial commencement" means that a project or program has reached the stage where its
10 last approval has been granted, or, for government programs for which an approval is not
11 required, the project or program has advanced to the point where financial commitments are in
12 place and scheduled, and design is essentially completed.⁴⁹

Commented [s12]: Should this is "action" to be consistent?

13 "Supplemental ~~statement~~ EIS" means an additional environmental impact statement updated
14 EIS⁵⁰ prepared for an action for which a ~~statement~~ an EIS was previously accepted, but which
15 has yet to progress to substantial commencement and, since acceptance, the action,
16 circumstances, or anticipated impacts have⁵¹ changed substantively in size, scope, intensity,
17 use, location, or timing, among other things.

18 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.⁵²

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

20 ⁴⁴ Housekeeping.

21 ⁴⁵ Housekeeping.

22 ⁴⁶ Housekeeping.

23 ⁴⁷ Updates language to match Act 50 (2000) on cultural practices.

24 ⁴⁸ Housekeeping.

25 ⁴⁹ Definition is proposed to help clarify when an action has progressed sufficiently to no longer require
26 examination for supplemental environmental review. This language draws on other statutes.

27 ⁵⁰ Housekeeping.

28 ⁵¹ Incorporates substantial commencement into the definition and emphasizes that changes can apply to
29 the proposed action, the environment, or knowledge (ties to supplemental sections).

30 ⁵² Adds definition from HRS § 343-2.

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1 Subchapter 3 Periodic Bulletin

§11-200-3 Periodic Bulletin

- 2 (a) The office shall inform the public through the publication of a periodic bulletin of the
3 following:
- 4 (1) Notices filed by agencies of the availability of ~~environmental assessments~~ EAs
5 and appropriate addendum documents for review and comments;
- 6 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or
7 not required;
- 8 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and
9 appropriate addendum documents for review and comments;
- 10 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
11 (5) Other notices required by the rules of the council.
- 12 (b) ~~The bulletin shall be made available to any person upon request. Copies of the bulletin~~
13 ~~shall also be sent to the state library system and other depositories or clearinghouses.~~⁵³
- 14 (e^b⁵⁴) The bulletin shall be issued on the eighth and twenty-third days of each month. All
15 agencies and applicants submitting draft ~~environmental assessments~~ EAs, ~~negative~~
16 ~~declarations~~ FONSIs, ~~preparation notices~~ EISPNS⁵⁵, ~~environmental impact statements~~
17 EISs, acceptance or non-acceptance determinations, addenda, supplemental ~~statements~~
18 EISs, supplemental ~~preparation notices~~ EISPNS, revised documents, withdrawals, and
19 other notices required to be published in the bulletin shall submit such documents or
20 notices to the office before the close of business ~~eight-four~~⁵⁶ working business⁵⁷ days
21 prior to the issue date. In case the deadline falls on a state holiday or ~~nonworking~~
22 non-business⁵⁸ day, the deadline shall be the next working business⁵⁹ day.
- 23 (e^c) All submittals to the office for publication in the bulletin shall be accompanied by a
24 completed informational form ~~which that~~ provides whatever information the office needs
25 to properly notify the public. The information requested may include the following: the
26 title of the action; the islands affected by the proposed action; tax map key numbers;
27 street addresses; nearest geographical landmarks; latitudinal and longitudinal

28 ⁵³ This rule is no longer required as the periodic bulletin is available to everyone electronically and no
29 paper copies are produced by the office.

30 ⁵⁴ Housekeeping. Renumbers paragraphs.

31 ⁵⁵ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
32 housekeeping purposes, unless otherwise noted.

33 ⁵⁶ OEQC does not need eight business days anymore to prepare the periodic bulletin.

34 ⁵⁷ Housekeeping.

35 ⁵⁸ Housekeeping.

36 ⁵⁹ Housekeeping.

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1 coordinates or other geographic data⁶⁰; applicable permits, including discretionary
2 approvals requiring preparation of the document under Chapter 343, HRS;⁶¹ whether the
3 proposed action is an agency or an applicant action; a citation of the applicable federal
4 or state statutes requiring preparation of the document; the type of document prepared;
5 the names, addresses and contact persons as applicable for⁵ of the accepting authority,
6 the
7 proposing agency, the approving agency, the applicant, and the any consultant(s); and a
8 brief
9 narrative summary of the proposed action which that provides sufficient detail to convey
10 the full impact of the proposed action to the public.

96 (ed) The office may provide recommendations to the agency responsible for the
10 environmental assessment EA or EIS regarding any requirements applicable to
11 administrative content
12 requirements set forth in this chapter.

128 (fe) The office may, on a space available basis, publish other notices not specifically related
139 to Chapter 343, HRS.

14 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,
15 343-3, 343-6)

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- 16 ⁶⁰ Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file.
17 The existing rules already allows for this but this language is to make it clearer.
18 ⁶¹ Clarifies that the agency is required to identify the specific discretionary approval that requires an
19 applicant to go through environmental review.

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1 Subchapter 4 Responsibilities

§11-200-4 Identification of Approving Agency and⁶² Accepting Authority

2 (a) Whenever an agency proposes an action, the final⁶³ authority to accept a ~~statement an~~
3 EIS shall rest with:
4 (1) The governor, or ~~an the governor's~~⁶⁴ authorized representative, whenever an
5 action proposes the use of state lands or ~~the use of~~⁶⁵ state funds or,⁶⁶ whenever
6 a state agency proposes an action ~~within under~~⁶⁷ section 11-200-6(b); or
7 (2) The mayor, or ~~an the mayor's~~⁶⁸ authorized representative, of the respective
8 county whenever an action proposes only the use of county lands or county
9 funds.
10 ~~In the event that an action involves state and county lands, state and county funds, or~~
11 ~~both state and county lands and~~
12 ~~funds, the governor or the governor's authorized representative shall have authority to~~
13 ~~accept the EIS.~~⁶⁹

14 (b) Whenever an applicant proposes an action, the authority for requiring an EA or⁷⁰
15 ~~statements EIS, and for making a determination regarding any required EA, and~~⁷¹
16 ~~accepting any required statements EIS that have been prepared shall rest with the~~
17 ~~approving~~⁷² agency ~~initially receiving and agreeing that initially received and agreed~~⁷³ to
18 ~~process the request for an approval. With respect to EISs, the approving agency is also~~
19 ~~called the accepting authority.~~⁷⁴

20 ⁶² Expand the content of this section to also identify the agency with responsibility in cases of EAs.

21 ⁶³ Removes the word final because it does not add to the meaning of the sentence.

22 ⁶⁴ Housekeeping.

23 ⁶⁵ Housekeeping.

24 ⁶⁶ Housekeeping.

25 ⁶⁷ Housekeeping.

26 ⁶⁸ Housekeeping.

27 ⁶⁹ Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and
28 funds. This language is modified from the original language in section 11-200-23.

29 ⁷⁰ Adds EAs to the identification of which agency has responsibility. Note that this change also means that

30 the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing

31 language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for

32 situations involving EAs.

33 ⁷¹ Adds EAs to the identification of which agency has responsibility. Language is phrase so that the

34 agency can make a FONSI or EISPN determination.

35 ⁷² Housekeeping. Clarifies the agency is called the approving agency.

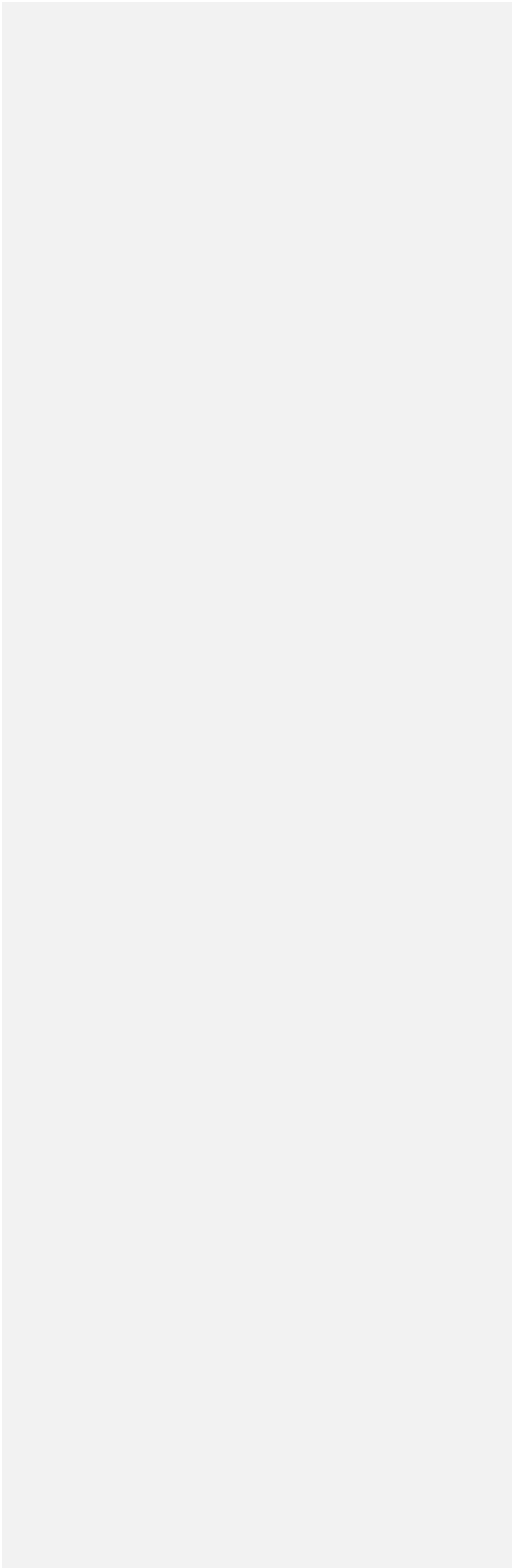
36 ⁷³ Housekeeping.

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[3634](#)⁷⁴ Clarifies that approving agency is the accepting authority for applicants.



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1 (c)⁷⁵ In the event that ~~there is more than one agency that is proposing the an action or, in the~~
2 ~~case of applicants,~~⁷⁶ ~~more than one agency h~~as jurisdiction over the proposed action,
3 and these agencies are unable to agree as to which agency has the responsibility for
4 complying with section 343-5(6) Chapter 343⁷⁷, HRS, the office, after consultation with
5 the agencies involved, shall determine which agency is responsible. In making the
6 determination, the office shall ~~take into consideration, including, but not limited to, the~~
7 ~~following factors consider~~⁷⁸:
8 (1) The agency with the greatest responsibility for supervising or approving the
9 action as a whole;
10 (2) The agency that can most adequately fulfill the requirements of Chapter
11 343, HRS, and this chapter;
12 (3) The agency that has special expertise or greatest⁷⁹ access to information; and
13 (4) The extent of participation of each agency in the proposed action after approval.

[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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Commented [s13]: Information relevant to what? The proposed action, assessment of likely impacts, reporting/enforcement data relevant to any conditions imposed?

14 ⁷⁵ Creates new paragraph to clarify that OEQC can make this determination for applicants and for
15 agencies when they are unable to agree on who is the proposing agency or approving agency. The
16 paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when
17 multiple agencies want the responsibility.
18 ⁷⁶ Clarifies OEQC's authority for determining who has responsibility for Chapter 343, HRS compliance.
19 ⁷⁷ Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.
20 ⁷⁸ Housekeeping.
21 ⁷⁹ Helps to distinguish among agencies - all agencies have access to information.

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1 Subchapter 5 Applicability

§11-200-5 Agency Actions

- 2 (a) For all proposed agency⁸⁰ actions ~~which that~~ are not exempt,⁸¹ as defined in section
3 11-200-8, the proposing⁸² agency shall assess at the earliest practicable time the
4 significance of potential impacts of ~~its actions~~ the proposed agency's proposed action⁸³,
5 including
6 the overall, cumulative impact in light of related past, present, and reasonably
foreseeable⁸⁴ actions in the region-area(s) affected⁸⁵ ~~and further actions contemplated.~~⁸⁶
- 7 (b) The applicability of Chapter 343, HRS, to specific agency proposed actions is
8 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~
9 ~~when an agency proposes to implement an action to use state or county lands or funds,~~
10 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~⁸⁷
- 11 (c) Use of state or county funds shall include any form of funding assistance flowing from
12 the State or a county, and use of state or county lands includes any use (title, lease,
13 permit, easement, licenses, etc.) or entitlement to those lands.

- 14 (d) With respect to agency actions, Chapter 343, HRS, generally exempts agencies from
~~con~~For agency actions, chapter 343, HRS, exempts from ducting applicability any
15 feasibility or
16 planning study for possible future programs or projects ~~which that~~ the agency has not
17 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a
18 proposal, it shall consider environmental factors and available alternatives and disclose
19 these in any future ~~assessment-EA~~ or subsequent ~~statement-EIS~~. If, however,⁸⁸ the
20 planning and feasibility studies involve testing or other actions ~~which that~~ may have a
21 significant impact on the environment, ~~then~~⁸⁹ an ~~environmental assessment-EA~~ or ~~EIS~~⁹⁰
22 shall be prepared.

22¹⁵ ⁸⁰ Housekeeping.

23¹⁶ ⁸¹ Housekeeping.

24¹⁷ ⁸² Housekeeping.

25¹⁸ ⁸³ Housekeeping.

26¹⁹ ⁸⁴ Clarifies what is considered as part of a cumulative look assessment. Language is drawn from NEPA, 40 CFR

27 1508.7.

28 ⁸⁵ Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

29 ⁸⁶ Removes "further actions contemplated" because it is captured in the language of "reasonably
30 foreseeable."

31 ⁸⁷ Housekeeping. Redundant language.

32 ⁸⁸ Housekeeping.

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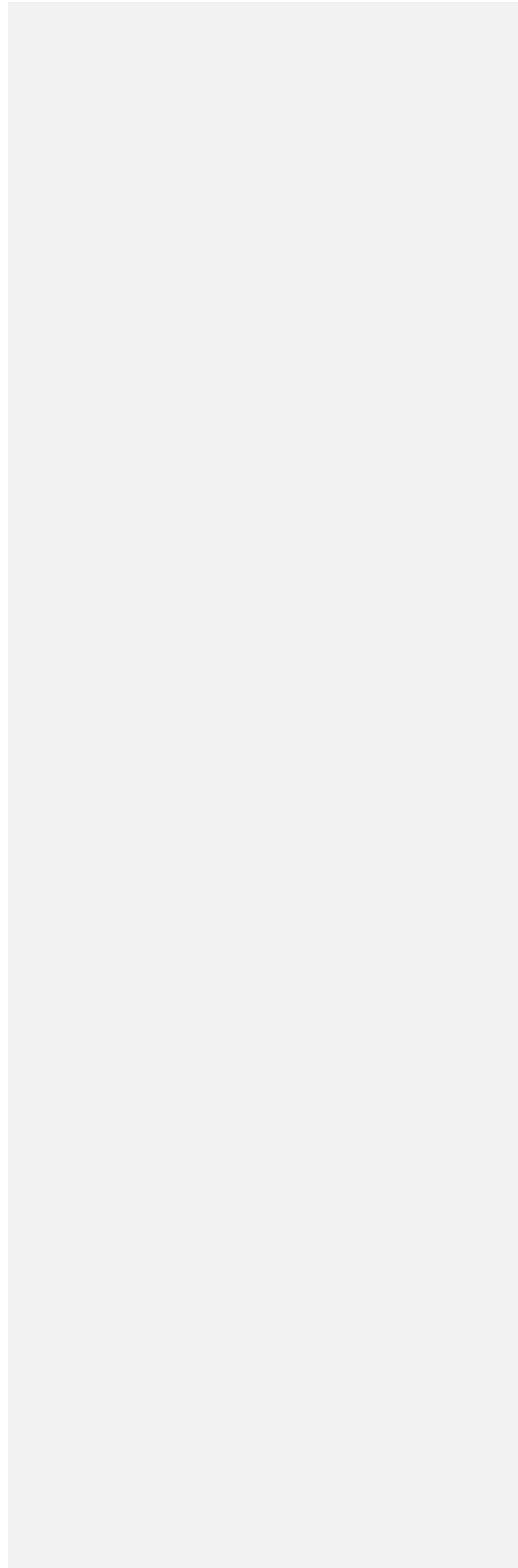
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33 ⁸⁹ Housekeeping.

34 ⁹⁰ Acknowledges direct-to-EIS pathway.



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1 (e) Any amendment to existing county general plans, however denominated, which may
2 include ~~but not be limited to~~ development plans,⁹¹ or community plans, where the
3 amendment would result in designations other than agriculture, conservation, or
4 preservation,⁹² requires an ~~environmental assessment~~ EA or EIS⁹³. (Actions by a county
5 initiating a comprehensive review toward effectuating either a general plan or
6 amendment thereof may be excepted. General plan amendments requested by a private
7 owner or developer outside of the comprehensive review process are not excepted.)

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

10 ⁹¹ Housekeeping.

11 ⁹² Housekeeping.

12 ⁹³ Direct-to-EIS is also an option.

§11-200-6 Applicant Actions

- 1 (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency
2 approval prior to proceeding with:
3 (1) Implementing actions ~~which that~~ are either located in certain specified areas or
4 contain certain specified elements⁹⁴; or
5 (2) Actions that require certain types of amendments to existing county general
6 plans.
7 The approving agency that initially received and agreed to process the request for
8 approval shall require the applicant to prepare an EA of the proposed action at the
9 earliest practicable time to determine whether an EIS is likely to be required; provided
10 that if the approving agency determines, through its judgment and experience, that an
11 EIS is likely to be required, the approving agency may authorize the applicant to choose
12 not to prepare an EA and instead prepare an EIS that begins with the preparation of an
13 EISPN.⁹⁵
- 14 (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the
15 agency ~~processing an applicant's request for approval to prepare an environmental~~
16 ~~assessment the an applicant to prepare an EA~~⁹⁶. There are seven geographical
categories,
17 five project proposal elements⁹⁷, and two administrative categories.
18 (1) The seven geographical categories are:
19 (A) The use of state or county lands;
20 (B) Any use within any land classified as conservation district by the state
21 land use commission under chapter 205, HRS;
22 (C) Any use within the shoreline area as defined in section 205A-41, HRS;
23 (D) Any use within any historic site or district [?] as designated in the ~~N~~ational
~~R~~egister or
24 Hawaii Register of Historic Places;
25 (E) Any use within the Waikiki area of O`ahu, the boundaries of which are
26 delineated in the land use ordinance as amended, establishing the
27 "Waikiki Special District";
28 (F) Any reclassification of any land classified as conservation district by the
29 state land use commission under chapter 205, HRS; and
30 (G) The construction of a new, or the expansion or modification of an existing
31 helicopter facilities facility⁹⁸ within the State ~~which that~~ by way of ~~their its~~⁹⁹

32³⁰ ⁹⁴ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

33³¹ ⁹⁵ Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to
34³² prepare the document.

35³³ ⁹⁶ Housekeeping.

36³⁴ ⁹⁷ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

37³⁵ ⁹⁸ Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

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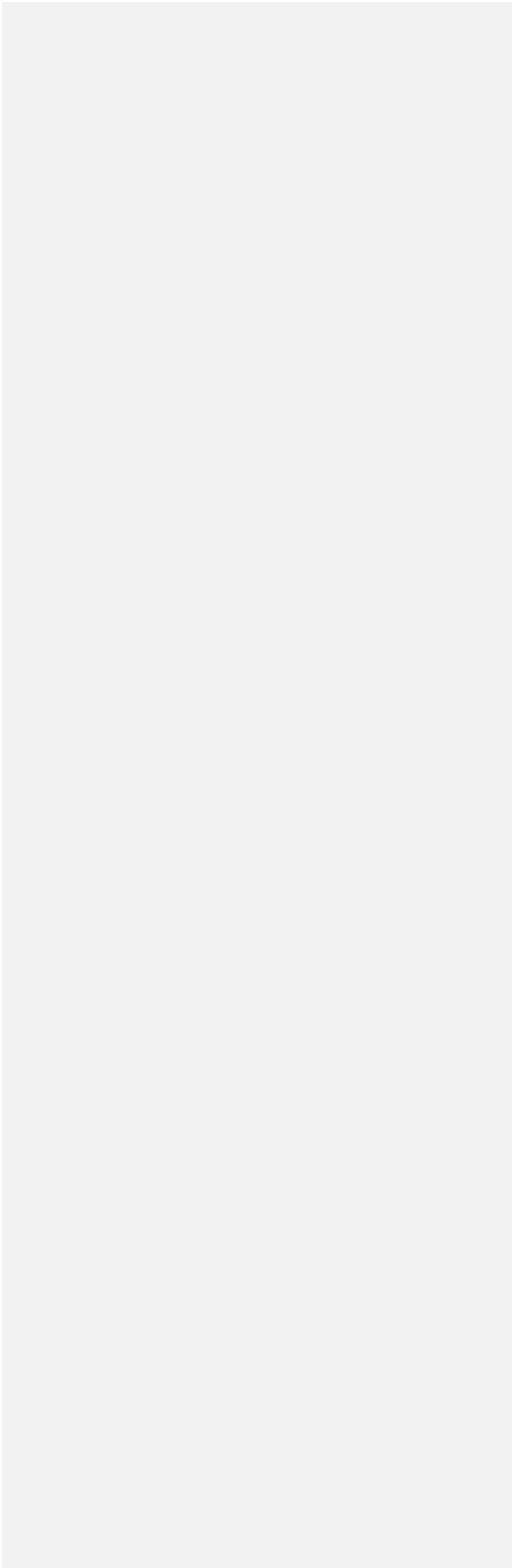
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[3836](#)⁹⁹ Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.



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activities may affect¹⁰⁰ any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or¹⁰¹ any historic site ~~or district~~ as **designated** in the National Register or Hawaii Register ~~as provided for in Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of~~ Historic Places¹⁰²; 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.

(2) The five ~~project-proposal~~ elements are:

- (A) Wastewater treatment unit, except an individual wastewater system or wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
- (B) Waste-to-energy facility;
- (C) Landfill;
- (D) Oil refinery; or
- (E) Power-generating facility.¹⁰³

(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,¹⁰⁴ 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 any~~ feasibility or planning studies **yes it conducts or causes to be**

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

¹⁰⁰ Housekeeping.

¹⁰¹ Housekeeping.

¹⁰² Housekeeping. Unnecessary specificity.

¹⁰³ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

¹⁰⁴ Housekeeping.

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§11-200-7 Multiple or Phased Applicant or Agency Actions

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

- 3 (1) The component actions are phases or increments of a larger total undertaking;
- 4 (2) An individual project is a necessary precedent ~~for~~ **to** a larger project;
- 5 (3) An individual project represents a commitment to ~~the completion of~~ a larger
project; or
- 6 (4) The actions in question are essentially identical and a single ~~statement~~ EIS will
7 adequately address the impacts of each individual action ~~and as well as~~ those of
~~the a group~~
8 of actions as a whole.

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

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§11-200-8 ~~Exempt Classes of Action~~ Exemption Notices¹⁰⁵

1 (a) Chapter 343, HRS, states that procedures whereby specific types of actions, because
2 they will probably have minimal or no significant effects on
3 the environment, either individually and-or cumulatively, ~~or~~
4 the environment, can be declared exempt from the preparation of an EA.¹⁰⁶ a list of
5 classes of actions shall be drawn up which, because they will probably have minimal or
6 no significant effect on the environment, may be declared exempt by the proposing
7 agency or approving agency from the preparation of an environmental assessment
8 provided that agencies declaring an action exempt under this section shall obtain the
9 advice of other outside agencies or individuals having jurisdiction or expertise as to the
10 propriety of the exemption. Government activities that do not rise to the level of being a
11 project or program, or are ordinary functions that by their nature do not have the
12 potential to adversely affect the environment more than negligibly, which may include,
13 among other activities, routine repair, maintenance, purchase of supplies, and
14 administrative actions involving personnel only, shall not be considered projects or
15 programs for the purposes of Chapter 343, HRS.¹⁰⁷ Actions declared exempt from the
16 preparation of an EA environmental assessment under this section are not exempt from
17 complying with any other applicable statute or rule. The following types of projects or
18 programs are eligible for exemption¹⁰⁸ list represents exempt classes of action:
19 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment,
20 or topographical features, involving negligible-minor¹⁰⁹ or no expansion or change
21 of use beyond that previously existing;
22 (2) Replacement or reconstruction of existing structures and facilities where the new
23 structure will be located generally on the same site and will have substantially the
24 same purpose, capacity, density, height, and dimensions as the structure
25 replaced;
26 (3) Construction and location of single, new, small facilities or structures and the
27 alteration and modification of the same and installation of new, small, equipment
28 and facilities and the alteration and modification of same, including, but not
29 limited to:

2928 ¹⁰⁵ Renames to shift focus from the "classes" (a term no longer used) to the notice.

3029 ¹⁰⁶ Incorporates language direction from chapter 343, HRS.

3130 ¹⁰⁷ Establishes a *de minimis* level of government activity for being considered eligible for environmental
3231 review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts
3332 to decide whether a particular activity constitutes such.

3433 ¹⁰⁸ Replaces "classes" language with "types".

3534 ¹⁰⁹ Replaces "negligible" with "minor" because in some cases minor operations, repairs, or maintenance
3635 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.¹¹⁰
3 if 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 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 Nnational Rregister or Hawaii Rregister of Historic Places as
22 provided for in the
23 National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470,
24 as amended, or chapter 6E, HRS¹¹²;
25 (9) Zoning variances except shoreline set-back variances; and¹¹³
26 ~~(10) Continuing administrative activities including, but not limited to purchase of~~
27 ~~supplies and personnel related actions.~~¹¹⁴
28 (14~~0~~)¹¹⁵ Acquisition of land and existing structures, including single or multi-unit dwelling
29 units, for the provision of affordable housing, involving no material change of use
30 beyond that previously existing uses, and for which the legislature has
appropriated or
otherwise authorized funding¹¹⁶; and¹¹⁷

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¹¹⁰ Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

¹¹¹ Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

¹¹² Unnecessary language.

¹¹³ Housekeeping.

¹¹⁴ Deletes language because it is addressed at the beginning of paragraph (a).

¹¹⁵ Housekeeping. Renumbering this and subsequent paragraphs.

¹¹⁶ 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

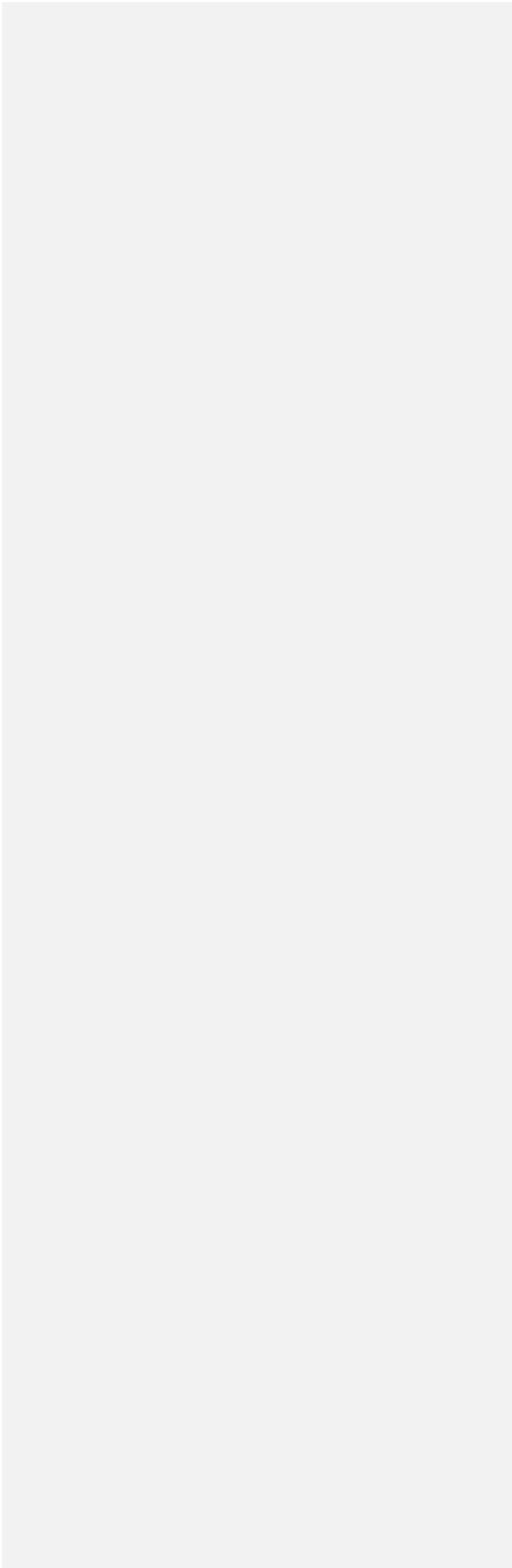
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41 11-200-8 with HAR Chapter 11-200. This language incorporates and compiles the 2007 change.

42 ¹¹⁷ Housekeeping.



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4 (11) New construction of affordable housing that where the only requirement for
2 undergoing Chapter 343, HRS review is the only has use of state or county lands
3 or funds, as the requirement for undergoing chapter 343, HRS, and as proposed
4 is consistent with existing state urban land classification, existing county
51 residential or mixed use zoning classification, and applicable federal, state, and
county development standards.¹¹⁸

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62 (b) All exemptions under the classes-types¹¹⁹ in this section are inapplicable when the
73 cumulative impact of planned successive actions in the same place, over time, is
84 significant, or when an action that is normally insignificant in its impact on the
95 environment may be significant in a particularly sensitive environment.

106 (c) Any agency, at any time, may request that a new exemption class-type¹²⁰ be added, or
117 that an existing one be amended or deleted. The request shall be submitted to the
128 council, in writing, and contain detailed information to support the request as set forth in
139 section 11-201-16, environmental council rules.

1410 (d) Each agency, through time and experience, shall develop its own list of specific types of
1511 actions which it considers fall within the exempt classes-types above¹²¹, as long as these
lists are
1612 consistent with both the letter and intent expressed in these exempt classes here¹²² and
1713 Chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the
1814 council for review and concurrence. The lists shall be reviewed periodically by the
1915 council.

Commented [s15]: How often? Annually? Every five
years, per (f)?

20 (e)¹²³ 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.¹²⁴ 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.¹²⁵

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24 ¹¹⁸ 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.

28 ¹¹⁹ Housekeeping.

29 ¹²⁰ Housekeeping.

30 ¹²¹ Housekeeping.

31 ¹²² Housekeeping.

32 ¹²³ Inserts new paragraphs; subsequent paragraphs are renumbered.

33 ¹²⁴ 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.

36 ¹²⁵ 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.

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1 (f) For an action that an agency considers ~~ed~~ 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).¹²⁶
6 For such actions, the agency shall obtain the advice of outside agencies or individuals
7 having jurisdiction or expertise regarding ~~as to the propriety of the exemption. An action~~
8 ~~may not~~ be segmented per section 11-200-7 so as to appear to be consistent with several types
97 ~~listed in paragraph (a).~~¹²⁷

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408 (eg) Each agency shall maintain records of such¹²⁸ actions, ~~called exemption notices,~~¹²⁹
419 ~~which it has found to be exempt from the requirements for preparation of an~~
42 ~~environmental assessment EA in under Chapter 343, HRS, and each agency shall~~
43 ~~produce the~~ records exemption notices for review upon request. The agency shall provide a means to
44 ~~notify and accept~~ input from the public in a timely manner after the exemption declaration is made. An
45 ~~agency may request the office to publish the exemption notice(s) in the periodic bulletin.~~
46 ~~The public's right to judicial proceeding on the lack of an assessment under Chapter 343.~~
47 ~~HRS shall commence from the date the public is notified of the exemption through the~~
4810 ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~¹³⁰

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4911 (fh) In the event the governor declares a state of emergency pursuant to Chapter 127A,
HRS,
2012 ¹³¹ the governor may exempt any affected program or action from complying with this
2113 chapter. ~~has authority to suspend laws, including Chapter 343, HRS. In such an event,~~
2214 ~~no exemption declaration is required and the proposing agency or approving agency~~

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2315 ¹²⁶ Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not
2416 received council concurrence within the past five years. The five years concurrence threshold is an
2517 incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation
2618 so that agencies can continue to use the list but with a higher burden of due diligence.
2719 ¹²⁷ Reminds agencies that an action may not be broken up into smaller pieces to fit within several
2820 exemption types.
2921 ¹²⁸ Housekeeping.
3022 ¹²⁹ Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these
3123 as a record.
3224 ¹³⁰ Requires agencies to make exemption notices publicly available either through the periodic bulletin or
3325 through their own means. Some agencies already do this by posting them to their website in a
3426 spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a

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3527 determination and how the public is supposed to know, so that everyone has a clear date for when legal

3628 challenge begins and ends, without making the disclosure process overly burdensome to agencies or

3729 OEQC.

3830 ¹³¹ 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.¹³²

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.¹³³

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

7 ¹³² 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.

10 ¹³³ 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.

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1 Subchapter 6 Determination of Significance

§11-200-9 Assessment of Agency Actions and Applicant Actions

- 2 (a) For agency actions, except those actions exempt from the preparation of an
3 ~~environmental assessment EA~~ pursuant to section 343-5, HRS, or section 11-200-8, the
4 proposing agency shall:
- 5 (1) Seek, at the earliest practicable time, the advice and input of the county agency
6 responsible for implementing the county's general plan for each county in which
7 the proposed action is to occur, and consult with other agencies having
8 jurisdiction or expertise as well as those citizen groups and individuals ~~which that~~
9 the proposing agency reasonably believes ~~to~~ may¹³⁴ be affected;
 - 10 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what the~~
11 ¹³⁵ statutory conditions under section 343-5(a), HRS, ~~that~~ that¹³⁶ require the
12 preparation of an ~~environmental assessment EA~~;
 - 13 (3) Prepare an ~~environmental assessment EA~~ pursuant to section 11-200-10 ~~of this~~
14 ~~chapter which shall also identify that identifies~~¹³⁷ potential impacts, ~~evaluate~~
15 evaluates¹³⁸ the potential significance of each impact, and ~~provide provides~~¹³⁹ for
16 detailed study of significant impacts;
 - 17 (4) Determine, after reviewing the ~~environmental assessment EA~~ described in
18 paragraph (3), and considering the significance criteria in section 11-200-12,
19 whether the proposed action warrants an anticipated ~~negative declaration FONSI~~
20 or an ~~environmental impact statement preparation notice EISPN~~, provided that
21 for an ~~environmental impact statement preparation notice EISPN~~, the proposing
22 agency shall inform the accepting authority of the proposed action;
 - 23 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~
24 FONSI or ~~environmental impact statement preparation notice EISPN~~ in
25 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the
26 completed informational form referenced¹⁴⁰ in section 11-200-3(e)¹⁴¹, and ~~four~~
27 ~~copies of~~¹⁴² the supporting ~~environmental assessment EA~~ (a draft ~~environmental~~
28 assessment EA for the anticipated ~~negative declaration FONSI~~ or a final

29 ¹³⁴ Housekeeping.
30 ¹³⁵ Housekeeping.
31 ¹³⁶ Housekeeping.
32 ¹³⁷ Housekeeping.
33 ¹³⁸ Housekeeping.
34 ¹³⁹ Housekeeping.
35 ¹⁴⁰ Housekeeping.
36 ¹⁴¹ Housekeeping.
37 ¹⁴² OEQC only needs one copy, not four.

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- 1 ~~environmental assessment-EA for the environmental impact statement~~
2 ~~preparation notice-EISPN) with the office in accordance with sections 11-200-3,~~
3 ~~11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;~~
4 (6) ~~Distribute-Circulate~~¹⁴³, 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~~¹⁴⁴ be affected;~~
8 (7) Deposit, concurrently with the filing in paragraph (5), one ~~paper~~¹⁴⁵ 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~~¹⁴⁶;
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 or an
24 ~~environmental impact statement preparation notice-EISPN pursuant to the~~
25 ~~requirements of section 11-200-11.2, ~~provided that for. For~~¹⁴⁷ ~~preparation notice~~~~
26 ~~EISPN determinations, the proposing agency shall proceed to section 11-200-15~~
27 ~~after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13,~~
28 ~~and 11-200-14, as appropriate.~~
29 (b) For applicant actions, except those actions exempt from the preparation of an
30 ~~environmental assessment-EA pursuant to section 343-5, HRS, or those actions which~~

31 ¹⁴³ The term "distribute" is the section heading of §11-200-21, thus giving the term a particular role in HAR
32 chapter 11-200, so the verb "circulate" is proposed instead.

33 ¹⁴⁴ Housekeeping.

34 ¹⁴⁵ Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the
35 people nearest the proposed action without electronic access are able to review the document.

36 ¹⁴⁶ Adds a request from the State Library that only two hard copies be submitted to the state library
37 system, one for the local library near the proposed action as an environmental/social justice concern and
38 one at the document center for archival records. Ideally, these are the only two hard copies produced of a
39 draft EA.

40 ¹⁴⁷ Housekeeping.

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1 that the approving agency declares exempt pursuant to section 11-200-8, the approving
2 agency shall:

- 3 (1) Require the applicant, at the earliest practicable time, to seek the advice and
4 input of the lead county agency responsible for implementing the county's
5 general plan for each county in which the proposed action is to occur, and
6 consult with other agencies having jurisdiction or expertise as well as those
7 citizen groups and individuals ~~which~~ that the approving agency reasonably
8 believes to be affected;
- 9 (2) Require the applicant to ~~provide whatever information the approving agency~~
10 ~~deems necessary to~~¹⁴⁸ complete the preparation of an ~~environmental assessment~~
11 EA in accordance with section 11-200-10;
- 12 (3) Within thirty days from the date of receipt of the applicant's completed d request for
13 approval to the approving agency:
14 (A) ~~prepare an environmental assessment pursuant to section 11-200-10; and~~
15 (B) ~~determine, after reviewing the environmental assessment and considering~~
16 ~~the significance criteria in section 11-200-12 whether the proposed action~~
17 ~~warrants an anticipated negative declaration or an environmental impact~~
18 ~~statement preparation notice;~~
19 require the applicant¹⁴⁹ to prepare a draft EA pursuant to section 11-200-10.¹⁵⁰
- 20 (4)¹⁵¹ Determine, after reviewing the draft EA and considering the significance criteria
21 in section 11-200-12, whether the proposed action warrants an anticipated
22 FONSI or an EISPN.¹⁵²
- 23 (45) File the appropriate notice of determination (anticipated ~~negative declaration~~
24 FONSI or environmental impact statement preparation notice EISPN in
25 accordance with section 11-200-11.1 or 11-200-11.2), the completed
26 informational form referenced¹⁵³ in section 11-200-3(d)¹⁵⁴ and four copies of the
27 supporting environmental assessment EA (a draft environmental assessment EA
28 for the anticipated ~~negative declaration FONSI or a final environmental~~
29 assessment EA for the environmental impact statement preparation notice

30 ¹⁴⁸ Narrows the language to focus on the EA on the content requirements.

31 ¹⁴⁹ Shifts the focus of preparation to the applicant per Act 172 (2012).

32 ¹⁵⁰ Removes the thirty-day requirement for an approving agency to prepare, review, and issue an
33 anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within 30 days of receipt of a
34 request for approval which course of environmental review the applicant is to take.

35 ¹⁵¹ Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is
36 appropriate. Subsequent paragraphs are renumbered.

37 ¹⁵² Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage
38 and filing an anticipated FONSI.

39 ¹⁵³ Housekeeping.

40 ¹⁵⁴ Housekeeping.

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- 1 EISPN) with the office in accordance with sections 11-200-3, and 11-200-11.1, or
2 11-200-11.2, and other applicable sections of this chapter¹⁵⁵;
- 3 (56) ~~Distribute-Circulate~~¹⁵⁶, or require the applicant to ~~distribute-circulate~~¹⁵⁷,
4 concurrently with the filing in paragraph (4), the draft ~~environmental assessment~~
5 EA to other agencies having jurisdiction or expertise as well as citizen groups
6 and individuals ~~which~~ that the approving agency reasonably believes to be
7 affected;
- 8 (67) Deposit or require the applicant to deposit, concurrently with the filing in
9 paragraph (4), one paper¹⁵⁸ copy of the draft ~~environmental assessment EA~~ at
10 the nearest state library in each county in which the proposed action is to occur
11 and one paper copy at the Hawaii Documents Center¹⁵⁹;
- 12 (78) Receive public comments, transmit copies of public comments to the applicant
13 and require the applicant to respond to public comments, all in accordance with
14 section 11-200-9.1 for draft ~~environmental assessment EAs~~, or 11-200-15 for
15 ~~preparation notices EISPNs~~ and their associated final ~~environmental assessment~~
16 EAs. For draft ~~environmental assessment EAs~~, the approving agency shall require
17 the applicant:
- 18 (A)¹⁶⁰ to ~~provide~~ revise the draft EA with¹⁶¹ ~~whatever~~ information the approving
19 agency deems necessary in accordance with section 11-200-10¹⁶² ~~to~~
20 revise the draft environmental assessment to inform its determination for
21 a FONSI or EISPN, taking into account comments on the draft EA¹⁶³;
- 22 (B) to incorporate comments as appropriate; and,
23 (C) to include copies of comment letters and the applicant's responses.
24 ~~(The~~ The¹⁶⁴ draft ~~environmental assessment EA~~, as revised, shall be filed as a
25 final ~~environmental assessment EA~~ as described in section 11-200-11.2)¹⁶⁵; and

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¹⁵⁵ Adds language to ensure that other sections are fulfilled as well.

¹⁵⁶ Replaces the term "distribute" 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.

¹⁵⁷ Replaces the term "distribute" 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.

¹⁵⁸ 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.

¹⁵⁹ 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.

¹⁶⁰ Breaks up the paragraph so that the three requirements for the applicant are easier to read.

¹⁶¹ Housekeeping.

¹⁶² Emphasizes that the final EA content should still meet the EA content requirements as set for in section 10.

¹⁶³ 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.

¹⁶⁴ Changes the sentence from a parenthetical statement to a standalone sentence.

¹⁶⁵ Changes the sentence from a parenthetical statement to a standalone sentence.

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1 (89) As appropriate, issue a ~~negative declaration-FONSI~~ determination or an
2 ~~environmental impact statement preparation notice-EISPN~~ with appropriate
3 notice of determination thereof pursuant to section 11-200-11.2 ~~within thirty days~~
4 ~~from the end of the thirty day public comment period of receiving information~~
5 ~~required for delivery to the approving agency pursuant to paragraph 8~~¹⁶⁶. For
6 ~~preparation notice-EISPN~~ determinations, the approving agency shall proceed to
7 section 11-200-15 after fulfilling the requirements of sections 11-200-10,
8 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

9 (c) For agency or applicant actions, the proposing agency or the approving agency, as
10 appropriate, shall analyze ~~or cause to be analyzed in the EA a reasonable range of~~¹⁶⁷
11 alternatives, in addition to the ~~proposed~~ action proposed in the ~~environmental assessment~~
EA.

12 (d) ~~For agency or applicant actions, if the agency determines, through its judgment and~~
13 ~~experience, that an EIS is likely to be required for an agency or applicant action, the agency may~~
14 ~~choose not to prepare~~
15 ~~an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and~~
16 ~~instead shall prepare an EIS that begins with an EISPN.~~¹⁶⁸

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

Commented [s17]: With the preceding strikeouts, not sure this is a complete sentence...or whether this was missed ~~strikeout~~.

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17 ¹⁶⁶ Changes the deadline from 30 days after the close of the public comment period to 30 days after
18 receipt of the final EA.

19 ¹⁶⁷ Clarifies that the alternatives to be examined are done so in the environmental assessment, not
20 independent of it, and that the agency directs the applicant to analyze alternatives in an
21 applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that
22 not all possible alternatives are required to be analyzed.

23 ¹⁶⁸ Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental
24 assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize
25 applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an
26 EIS beginning with the EISPN.

§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration Finding of~~ No Significant Impact¹⁶⁹ Determinations & Addenda to Draft Environmental Assessments

1 (a) This section shall apply only if a proposing agency or an approving agency anticipates a
2 ~~negative declaration~~ FONSI determination for a proposed action and that agency has
3 completed the draft EA requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4),
4 (5), (6) and (7) for agencies¹⁷⁰; or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5)
5 and (6) for applicants¹⁷¹, as appropriate.

6 (b) The period for public review and for submitting written comments for both agency actions
7 and applicant actions shall begin as of the initial issue date that notice of availability of
8 the draft environmental assessment EA was published in the periodic bulletin and shall
9 continue for a period of thirty days. ~~The period for public review and for submitting written~~
10 ~~comments regarding proposed~~ For agency actions and applicant actions, ~~the period~~
11 ~~for public review and for submitting written comments~~ shall commence from the date that
12 ~~of~~
13 notice of availability of the draft EA is initially issued in the periodic bulletin and shall
14 continue for a period of thirty calendar days.¹⁷² Written comments sent to the proposing
15 agency or approving agency, whichever is applicable, ~~and/or with~~ a copy of the comments
16 sent to
17 the applicant, ~~if applicable,~~¹⁷³ or proposing agency,¹⁷⁴ shall be received by or postmarked
18 to
19 the proposing agency or approving agency, within the thirty-day period. Any comments
20 outside of the thirty-day period need not be ~~responded to nor~~ considered ~~or responded to~~.
21 However, for a
22 proposed site for a new correctional facility or for the expansion of an existing
23 correctional facility, pursuant to section 353-16.35, HRS, the public review and public
24 commenting period ~~thirty day period~~ shall be a
25 ~~sixty calendar days~~ period.¹⁷⁵

2014 ¹⁶⁹ Housekeeping.

2415 ¹⁷⁰ These paragraphs refer to requirements for agencies preparing an EA through distributing and filing
2216 the Draft EA.

2317 ¹⁷¹ These paragraphs refer to requirements for applicants preparing an EA through distributing and filing
2418 the Draft EA.

2519 ¹⁷² Measures time consistently in the process. Adds clarity to how to count days (distinguishes from

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~~2620~~ working days) and that the publication date is counted as day zero.

~~2721~~¹⁷³ Clarifies that applicants are not always involved and when not involved, not copy of the comments

~~2822~~ need to be sent to the applicant.

~~2923~~¹⁷⁴ Redundant; the proposing agency is already as identified as receiving comments.

~~3024~~¹⁷⁵ Incorporates the public comment period and time limit from HRS § 353-16.35.

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1 (c) For agency actions, the proposing agency shall respond in writing to all comments
2 received or postmarked during the thirty-day review period, shall incorporate comments
3 into
4 the final EA¹⁷⁶ as appropriate,¹⁷⁷ and shall append the comments and responses in to¹⁷⁸
5 the
6 final environmental assessment EA. Each response shall be sent directly to the person
7 commenting, with copies of the response also sent to the office. If a number of
8 comments are identical or very similar, the proposing agency may group the comments
9 and prepare a single standard response for each group. The comments must be
10 attached to the final EA regardless of whether the agency believes the comments merit
11 individual discussion in the body of the final EA.¹⁷⁹

12 (d) For applicant actions, the applicant shall respond in writing to all comments received or
13 postmarked during the thirty-day review period, and the approving agency shall¹⁸⁰
14 incorporate or comments into the final EA as appropriate, and¹⁸¹ append the comments
15 and responses in to¹⁸² the final environmental assessment EA. If a number of comments
16 are identical or very similar, the applicant may group the comments and prepare a single
17 standard response for each group. The comments must be attached to the final EA
18 regardless of whether the approving agency believes the comments merit individual
19 discussion in the body of the final EA.¹⁸³ Each response shall be sent directly to the
20 person commenting with a copy to the office.¹⁸⁴ A copy of each response shall be sent to
21 the approving agency for its timely preparation of a determination and notice thereof
22 pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.¹⁸⁵

21 ¹⁷⁶ Clarifies that the comments are included in the final EA.

22 ¹⁷⁷ Housekeeping.

23 ¹⁷⁸ Housekeeping.

24 ¹⁷⁹ Because the responses are included in the final EA, it is not necessary to send an individual response
25 letter to each person who comments. The requirement to send a response to every individual person
26 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via
27 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with
28 NEPA practice, which allows grouping of identical or similar comments and providing one response that
29 covers the issues raised in the identical or similar comments. Because individual responses would no
30 longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

31 ¹⁸⁰ The applicant prepares the document so has the responsibility to incorporate the comments and
32 responses into the document.

33 ¹⁸¹ Clarifies that the comments are incorporated into the final EA.

34 ¹⁸² Housekeeping.

35 ¹⁸³ Because the responses are included in the final EA, it is not necessary to send an individual response
36 letter to each person who comments. The requirement to send a response to every individual person
37 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via
38 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with
39 NEPA practice, which allows grouping of identical or similar comments and providing one response that
40 covers the issues raised in the identical or similar comments.

41 ¹⁸⁴ Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of
42 the response is no longer relevant.

43 ¹⁸⁵ Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement

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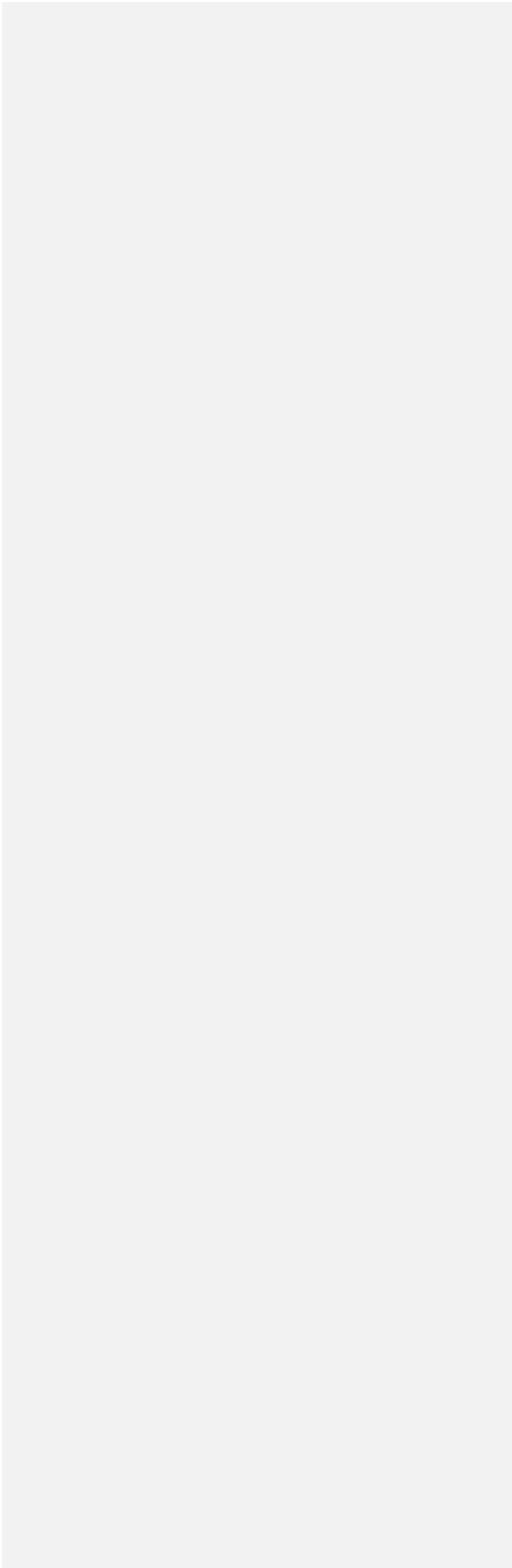
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44 is no longer applicable.



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1 (e) An addendum document to a draft ~~environmental assessment EA~~ shall reference the
2 original draft ~~environmental assessment EA~~ it attaches to and shall comply with all
3 applicable public review and comment requirements set forth in sections 11-200-3 and
4 11-200-9.

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

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§11-200-10 Contents of an Environmental Assessment

- 1 The proposing agency (if agency action) or approving agency (if applicant or agency action) shall
2 prepare any draft or final environmental
3 assessment EA of each for any proposed action and determine whether the anticipated effects
4 constitute a significant effect in the context of Chapter 343, HRS, and section 11-200-12. The
5 environmental assessment EA shall contain, but not be limited to, the following information:
- 6 (1) Identification of applicant or proposing agency;
 - 7 (2) Identification of approving agency, if applicable;
 - 8 (3) Identification of agencies, citizen groups, and individuals consulted in making
9 preparing¹⁸⁶ the assessment;
 - 10 (4) General description of the action's technical, economic, social, and
11 environmental characteristics;
 - 12 (5) Summary description of the affected environment, including suitable and
13 adequate regional, location and site maps such as Flood Insurance Rate Maps,
14 Floodway Boundary Maps, or United States Geological Survey topographic
15 maps;
 - 16 (6) Identification and summary analysis¹⁸⁷ of impacts and alternatives considered;
 - 17 (7) Proposed mitigation measures;
 - 18 (8) Agency determination or, for draft environmental assessments EAs only, an
19 anticipated determination;
 - 20 (9) Findings and reasons supporting the agency determination or anticipated
21 determination;
 - 22 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be
23 prepared;
 - 24 (11) List of all required¹⁸⁸ permits and approvals (State, federal, county) required and
25 identification of which are considered to be discretionary¹⁸⁹; and
 - 26 (12) Written comments and responses to the comments under received pursuant to¹⁹⁰
27 the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or
11-200-15, and statutorily prescribed public review periods.

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28 ¹⁸⁶ Uses more accurate time consistent with language in the rules.

29 ¹⁸⁷ Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood
30 to mean a lengthy discussion. It means that the impact discussion section should identify an impact and
31 provide a detailed discussion sufficient to support a conclusion. Summaries tend to be assertions of
32 impact and the degree of significance without presenting a supporting argument.

33 ¹⁸⁸ Housekeeping. Moves the word required from the end of the clause to before the word "permits".

34 ¹⁸⁹ Adds identification of approvals that are considered discretionary. This helps to inform why an
35 applicant is undergoing Chapter 343, HRS review, and when a proposed action has reached "substantial
36 commencement" for the purposes of a supplemental EIS.

37 ¹⁹⁰ Housekeeping.

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¹ [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),
² 343-6)

§11-200-11 REPEALED.

³ [R AUG 31 1996]

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

- 1 (a) After:¹⁹¹
2 (1) ~~preparing~~ Preparing, or causing to be prepared,¹⁹² ~~an environmental assessment~~
3 ~~a draft EA, and~~¹⁹³
4 (2) ~~reviewing~~ Reviewing any public and agency comments, if any, and¹⁹⁴
5 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,
6 if the proposing agency or the approving agency anticipates that the proposed action is
7 not likely to have a significant effect, ~~it~~ the proposing agency or approving agency¹⁹⁵ shall
8 issue a notice of determination ~~which that~~¹⁹⁶ shall be an anticipated ~~negative declaration~~
9 FONSI, subject to the public review provisions of section 11-200-9.1.
- 10 (b)¹⁹⁷ The proposing agency or approving agency shall ~~also file such the~~¹⁹⁸ notice and
11 supporting draft EA¹⁹⁹ with the office as early as possible after the determination is made
12 pursuant to and in accordance with section 11-200-9,²⁰⁰ and the requirements in
13 subsection (c)²⁰¹ ~~along with four copies of the supporting environmental assessment~~²⁰².
14 ~~In addition to the above, the anticipated negative declaration determination for any~~
15 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~
16 ~~applicant actions, the approving agency shall also send the anticipated FONSI to the~~
17 applicant.²⁰³

18 ¹⁹¹ Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to
19 make the language clearer.

20 ¹⁹² Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare
21 documents instead of the approving agency.

22 ¹⁹³ Housekeeping. Specifies draft EA.

23 ¹⁹⁴ Housekeeping.

24 ¹⁹⁵ Housekeeping.

25 ¹⁹⁶ Housekeeping.

26 ¹⁹⁷ Housekeeping. Renumbering of all subsequent paragraphs of this section.

27 ¹⁹⁸ Housekeeping.

28 ¹⁹⁹ Simplifies the submittal requirement to one copy of the notice of determination and one copy of the
29 final EA. Electronic documentation can be submitted.

30 ²⁰⁰ Housekeeping.

31 ²⁰¹ Housekeeping.

32 ²⁰² Simplifies the submittal requirement to one copy of the notice of determination and one copy of the
33 final EA. Electronic documentation can be submitted.

34 ²⁰³ Clarifies that approving agencies have a responsibility to send their determination to the applicant
35 directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

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1 (bc) The office shall publish notice of availability of the draft ~~environmental assessment EA~~
2 ~~including for the anticipated negative declaration FONSI in the periodic bulletin following~~
the date
32 of receipt by the office in accordance with section 11-200-3.

43 (ed) The notice of determination shall indicate in a concise manner:
54 (1) Identification of the²⁰⁴ applicant or proposing agency;
65 (2) Identification of the approving agency or²⁰⁵ accepting authority;
76 (3) ~~Brief~~ A brief²⁰⁶ description of the²⁰⁷ proposed action;
87 (4) ~~Determination~~ The FONSI determination²⁰⁸;
98 (5) Reasons supporting the²⁰⁹ ~~FONSI~~ determination; and
409 (6) ~~Name~~ The name²¹⁰, title, contact information, including the email address,
4410 physical²¹¹ address, and phone number of contact person for further information.

4211 (de) When an agency withdraws a document, determination, or both²¹² pursuant to ~~its the~~
4312 agency's²¹³ rules, the agency shall submit to the office a written letter informing the office
4413 of ~~its its the~~ withdrawal. The office shall publish notice of agency withdrawals in
accordance
4514 with section 11-200-3.

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

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17 ²⁰⁴ Housekeeping.

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

20 ²⁰⁶ Housekeeping.

21 ²⁰⁷ Housekeeping.

22 ²⁰⁸ Housekeeping.

23 ²⁰⁹ Housekeeping.

24 ²¹⁰ Housekeeping.

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

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

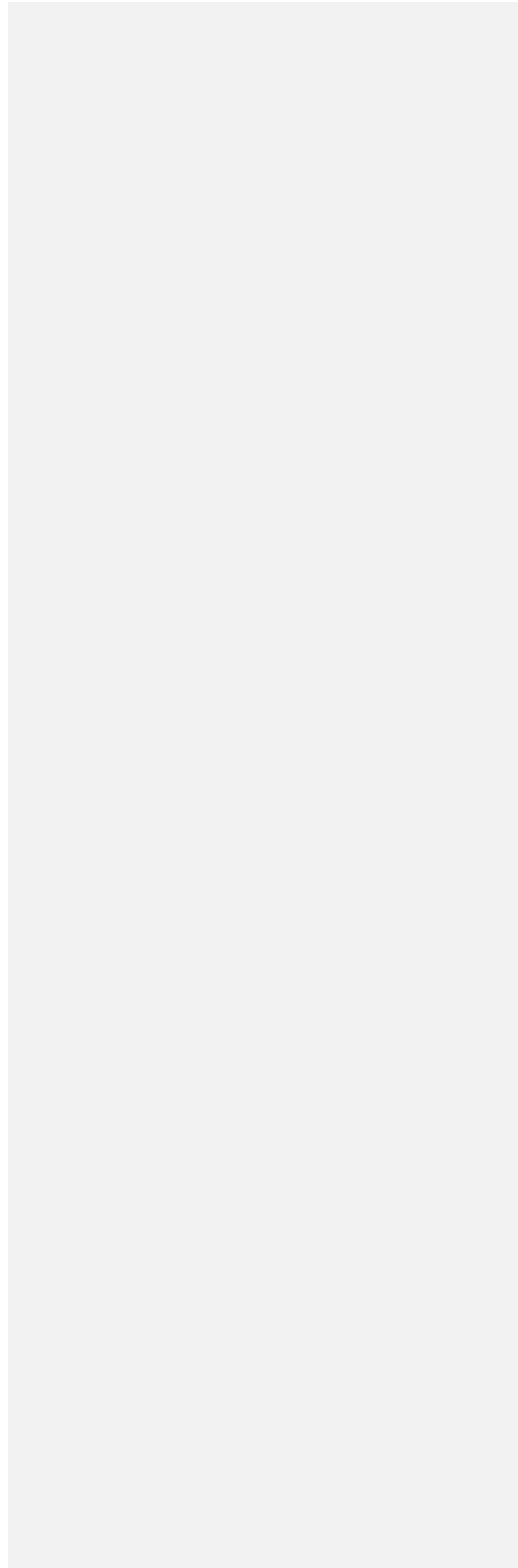
29 ²¹³ Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules;
30 determinations rest with the agency and are made pursuant to that agency's rules, procedures, and

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practices.

31



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

- 1 (a) After²¹⁴
2 ~~(1) preparing~~ Preparing, or causing to be prepared,²¹⁵ a final ~~environmental~~
3 ~~assessment~~ EA,
4 ~~(2) reviewing~~ Reviewing any public and agency comments, ~~if any, and~~²¹⁶
5 ~~(3) applying~~ Applying the significance criteria in section 11-200-12,
6 the proposing agency or the approving agency shall issue ~~one of the following notices a~~
7 notice²¹⁷ of determination ~~for an EISPN or FONSI~~²¹⁸ in accordance with section
8 11-200-9(a) or 11-200-9(b), and file the notice with the office ~~addressing the~~
9 ~~requirements in subsection (c), along with four copies of the supporting final~~
10 ~~environmental assessment,~~²¹⁹ provided that in addition to the above, all notices of
11 determination for any applicant action shall be mailed to the requesting applicant by the
12 approving agency.²²⁰
- 13 ~~(1b~~²²¹) ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or
14 approving agency determines that a proposed action may have a significant effect, it
15 shall issue a notice of determination ~~which that~~ shall be an ~~environmental impact~~
16 ~~statement preparation notice~~ EISPN ~~and such notice shall be filed as early as possible~~
17 ~~after the determination is made pursuant to and in accordance with section 11-200-9~~²²².
- 18 ~~(2c)~~ Negative declaration ~~FONSI~~. If the proposing agency or approving agency determines
19 that a proposed action is not likely to have a significant effect, it shall issue a notice of
20 determination ~~which that~~²²³ shall be a ~~negative declaration~~ FONSI, ~~and the proposing~~
21 ~~agency or approving agency shall file such notice with the office as early as possible~~
22 ~~after the determination is made pursuant to and in accordance with section 11-200-9~~²²⁴.

23 ²¹⁴ Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to
24 make the language clearer.

25 ²¹⁵ Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare
26 documents instead of the approving agency.

27 ²¹⁶ Housekeeping.

28 ²¹⁷ Housekeeping.

29 ²¹⁸ Clarifies which of two determinations is to be issued.

30 ²¹⁹ Removes unnecessary language on final EA filing requirements

31 ²²⁰ This requirement is now addressed in the new proposed paragraph D.

32 ²²¹ Housekeeping. Renumbering of all subsequent paragraphs of this section.

33 ²²² Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

34 ²²³ Housekeeping.

35 ²²⁴ Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

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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 the requirements in subsection (f). ²²⁵ For applicant
4 actions, the approving agency shall send the notice of determination for an EISPN or
5 FONSI to the applicant. ²²⁶

6 (be) The office shall publish the appropriate notice of determination in the periodic bulletin
7 following receipt of the documents described in subsection (a) by the office in accordance
with
7 section 11-200-3.

9 (ef) The notice of determination for a FONSI²²⁷ shall indicate in a concise manner:
10 (1) Identification of the²²⁸ applicant or proposing agency;
11 (2) Identification of the approving agency or²²⁹ accepting authority;
12 (3) Brief. A brief²³⁰ description of the²³¹ proposed action;
13 (4) ~~Determination. The determination~~²³²;
14 (5) Reasons supporting the²³³ determination; and
15 (6) ~~Name. The name~~²³⁴, title, contact information, including the email address,
16 physical²³⁵ address, and phone number of contact person for further information.
17 The notice of determination for an EISPN shall be prepared pursuant to section
18 11-200-15.²³⁶

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19 ²²⁵ Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal
20 requirement to one copy of the notice of determination and one copy of the final EA. Electronic
21 documentation can be submitted.

22 ²²⁶ Clarifies that approving agencies have a responsibility to send their determination to the applicant
23 directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

24 ²²⁷ Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in
25 section 11-200-15.

26 ²²⁸ Housekeeping.

27 ²²⁹ Adds approving agency for the case of applicants because accepting authority only is applicable for
28 EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

29 ²³⁰ Housekeeping.

30 ²³¹ Housekeeping.

31 ²³² Housekeeping.

32 ²³³ Housekeeping.

33 ²³⁴ Housekeeping.

34 ²³⁵ Includes email as a requirement for contact information. Most communication is done by email so
35 providing that is just as important as a phone number or physical mail address.

36 ²³⁶ Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS
37 concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the
38 EISPN is identical.

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

1 (dg) When an agency withdraws a document, determination, or both²³⁷ pursuant to ~~its~~ the
2 agency's²³⁸ rules, the agency shall submit to the office a written letter informing the office
3 of its withdrawal. The office shall publish notice of agency withdrawals in accordance
4 with section 11-200-3.

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

6 ²³⁷ Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a
7 determination (i.e., EISPN or FONSI).

8 ²³⁸ Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules;
9 determinations rest with the agency and are made pursuant to that agency's rules, procedures, and
10 practices.

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§11-200-12 Significance Criteria

- 1 (a) In considering the significance of potential environmental effects, agencies shall consider
2 the sum of effects on the quality of the environment,²³⁹ and shall evaluate the overall and
3 cumulative effects of an action.
- 4 (b) In determining whether an action may have a significant effect on the environment, the
5 agency shall consider every phase of a proposed action, the expected consequences,
6 both primary and secondary, and the cumulative as well as the short-term and long-term
7 effects of the action. In most instances, an action shall be determined to have a
8 significant effect on the environment if it:
- 9 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~
10 ~~cultural resource. Irrevocably commits a natural resource²⁴⁰.~~
- 11 (2) Curtails the range of beneficial uses of the environment;
- 12 (3) Conflicts with the state's long-term environmental policies or long-term
13 environmental²⁴¹ goals and guidelines as expressed in Chapter 344, HRS, or
14 other laws,²⁴² and any revisions thereof and amendments thereto, court
15 decisions, or executive orders;
- 16 (4) ~~Substantially Adversely²⁴³ affects the economic welfare, or social welfare, cultural~~
17 ~~resources or~~
18 ~~cultural practices²⁴⁴ of the community or State;~~
- 19 (5) Substantially affects public health;
- 20 (6) Involves substantial secondary impacts, such as population changes or effects
21 on public facilities;
- 22 (7) Involves a substantial degradation of environmental quality;
- 23 (8) Is individually limited but cumulatively has considerable effect upon the
24 environment or involves a commitment for larger actions;
- 25 (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- 26 (10) Detrimently affects air or water quality or ambient noise levels;
- 27 (11) Affects or is likely to suffer damage by being located in an environmentally
28 sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area,
geologically hazardous land, estuary, fresh water, or coastal waters;

Commented [s19]: If this is removed, it should be
reinserted in (4)

29 ²³⁹ Housekeeping.

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

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

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

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

38 ²⁴⁴ Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language

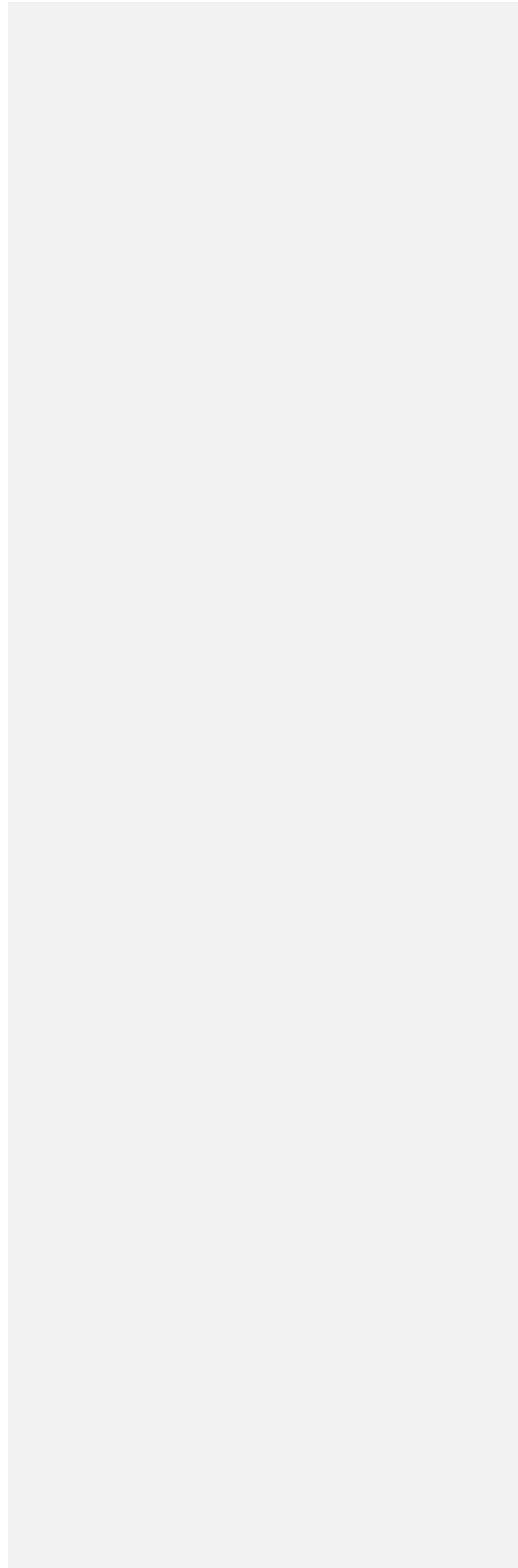
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was amended by Act 50 (2000) to include cultural practices as part of significance.



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- 1 (12) Substantially affects scenic vistas and viewplanes identified in county or state
- 2 plans or studies; or,
- 3 (13) Requires substantial energy consumption.

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

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

- 1 (a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action
2 or receives a request for approval, the agency may consider and, when applicable and
3 appropriate, incorporate by reference, in whole or in part, previous determinations of
4 whether ~~a statement-an EIS~~ is required, and any previously accepted ~~statements-EIS~~.
- 5 (b) Previous determinations and previously accepted ~~statements-EISs~~ may be incorporated
6 by applicants and agencies whenever the information contained therein is pertinent to
7 the decision at hand and has logical relevancy and bearing to the action being
8 considered.
- 9 (c) Agencies shall not, without considerable pre-examination and comparison, use past
10 determinations and previous ~~statement-EISs~~ to apply to the action at hand. The action
11 for which a determination is sought shall be thoroughly reviewed prior to the use of
12 previous determinations and previously accepted ~~statements-EISs~~. Further, when
13 previous determinations and previous ~~statements-EISs~~ are considered or incorporated
14 by reference, they shall be substantially similar to and relevant to the action then being
15 considered.
- 16 [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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1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

§11-200-14 General Provisions

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

- 7 (1)²⁴⁵ ~~identifying~~ Identifying environmental concerns,
- 8 (2) Conducting no fewer than one EIS public scoping meeting in the area or
community that will be impacted by the proposed action,²⁴⁶
- 9 (3) ~~obtaining~~ Obtaining various relevant data,
- 10 (4) ~~conducting~~ Conducting necessary studies,
- 11 (5) ~~receiving~~ Receiving public and agency input,
- 12 (6) ~~evaluating~~ Evaluating alternatives, and
- 13 (7) ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing
14 adverse impacts.

15 An EIS is meaningless without the conscientious application of the EIS process as a whole, and
16 shall not be merely a self-serving recitation of benefits and a rationalization of the proposed
17 action. Agencies shall ensure that ~~statements-EISs~~ are prepared at the earliest opportunity in
18 the planning and decision-making process. This shall assure an early and open forum for
discussion

19 of adverse effects and available alternatives, and that the decision-makers will be enlightened
regarding to

20 any environmental consequences of the proposed action prior to decision making²⁴⁷.

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

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22 ²⁴⁵ Housekeeping. Breaks the paragraph up and helps to see the minimum elements of the EIS process.
23 Renumbers paragraphs based on addition of public scoping meeting.

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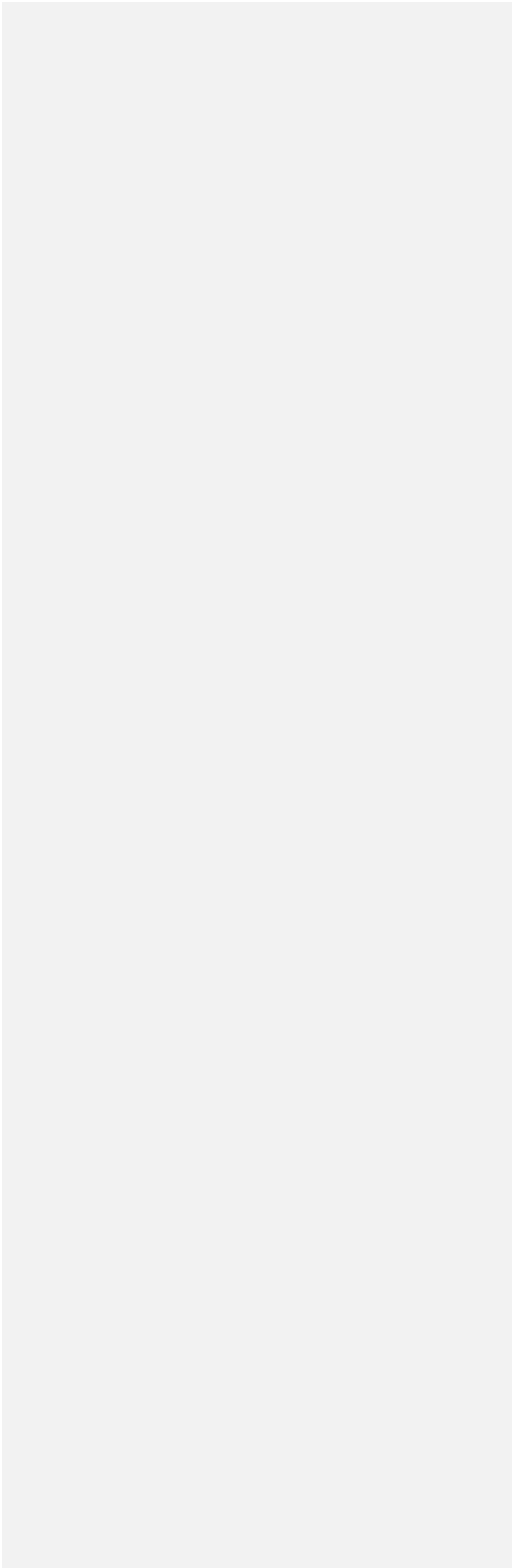
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²⁴⁶ Requires at least one public scoping meeting for an EIS.

25

²⁴⁷ Emphasizes that the EIS process is to occur before committing to a particular course of action.



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

- 1 (a)²⁴⁸ An EISPN, including one resulting from an agency authorizing the preparation of an EIS
2 without first requiring an EA, shall indicate in a concise manner:
3 (1) Identification of the proposing agency or applicant;
4 (2) Identification of the accepting authority;
5 (3) The determination;
6 (4) Reasons supporting the determination;
7 (5) A description of the proposed action and its location;
8 (6) A description of the affected environment and include regional, location, and site
9 maps;
10 (7) Possible alternatives to the proposed action;
11 (8) The proposing agency's or applicant's proposed scoping process, including when
12 and where the EIS public scoping meeting or meetings will be held;
13 (9) The name, title, contact information, including the email address, physical
14 address, and phone number of contact person for further information.²⁴⁹

- 15 (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all
16 appropriate agencies noted in section 11-200-10(10), ~~and other~~²⁵⁰ citizen groups, and
17 concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end,
18 agencies and applicants shall endeavor to develop a fully acceptable draft²⁵¹ EIS prior to
19 the time the EIS is filed with the office, through a full and complete consultation process,
20 and shall not rely solely upon the review process to expose environmental concerns. At
21 ~~the discretion of the proposing agency or an applicant, a~~ A public scoping meeting to
22 ~~receive comments on the final environmental assessment (for the EIS preparation notice~~
23 ~~determination) setting forth addressing the scope of the draft EIS may shall~~²⁵² be held
24 within the thirty-day public review and comment period in subsection (bc), ~~provided that~~
25 ~~the proposing agency or applicant shall treat oral and written comments received at such~~
26 ~~a meeting as indicated in subsection (d)~~²⁵³.

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27 ²⁴⁸ Creates a new paragraph and renumbers subsequent paragraphs.

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

30 ²⁵⁰ Housekeeping.

31 ²⁵¹ Clarifies that the document is a draft EIS.

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

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

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- 1 (bc) Upon publication of ~~a preparation notice~~ an EISPN in the periodic bulletin, agencies,
2 groups, or individuals shall have a period of thirty days from the initial **publication issue**
3 date in
4 which to request to become a consulted party and to make written comments regarding
5 the environmental effects of the proposed action. Upon written request by the consulted
6 party and upon good cause shown, the approving agency or accepting authority may
7 extend the period for comments for a period not to exceed thirty **additional** days.
- 7 (ed) Upon receipt of the request, the proposing agency or applicant shall provide the
8 consulted party with ~~a copy of the environmental assessment or requested portions~~
9 ~~thereof and~~²⁵⁴ the ~~environmental impact statement preparation notice~~ EISPN.
10 Additionally, the proposing agency or applicant may provide any other information it
11 deems necessary. The proposing agency or applicant may also contact other agencies,
12 groups, or individuals which it feels may provide pertinent additional information.
- 13 (de) Any substantive written²⁵⁵ comments received by the proposing agency or applicant
14 pursuant to this section shall be responded to in writing and as appropriate, incorporated
15 into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS
16 with the approving agency or accepting authority. Letters submitted which contain no
17 comments on the project but only serve to acknowledge receipt of the document do not
18 require a written response. Acknowledgement of receipt of these items must be included
19 in the ~~final environmental assessment or~~²⁵⁶ ~~final statement draft EIS~~²⁵⁷.

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

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21 ²⁵⁴ Removes the requirement to provide a copy because the EISPN is available online to anyone at any
22 time.

23 ²⁵⁵ Adds written as a requirement for being responded to and reproduced in the draft EIS.

24 ²⁵⁶ Removes final EA requirement because a final EA may not have been prepared.

25 ²⁵⁷ Replaces final EIS with draft EI, mirroring the previous sentence.

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§11-200-16 Content Requirements

1 ~~Each. For draft and final EISs. The environmental impact statement the document~~²⁵⁸ shall contain
2 an
3 explanation of the environmental consequences of the proposed action, pursuant to section
4 11-200-17²⁵⁹. The contents shall fully declare the environmental implications of the proposed
5 action and shall discuss all ~~relevant and feasible~~ reasonably foreseeable²⁶⁰ consequences of the
6 action. In order that the public can be fully informed and that the agency can make a sound
7 decision based upon the full range of ~~responsible~~ opinion on environmental effects, ~~a statement~~
8 an EIS shall include responsible opposing views, if any, on significant environmental issues
9 raised by the proposal.
10 [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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Commented [s20]: Who gets to decide what is "responsible"? And is there a corollary requirement that the preparer identify and explain why comments were rejected as "irresponsible"? Is OEQC the arbiter of this?

11 ²⁵⁸ Clarifies that Section 16 applies to both draft and final EISs.

12 ²⁵⁹ Explicitly connects HAR §11-200-16 and §11-200-17.

13 ²⁶⁰ Replaces "relevant and feasible" with "reasonably foreseeable," a phrase in line with NEPA, with more
14 case history, and federal guidance to provide clarity on the desired standard.

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

- 1 (a) The draft EIS, at a minimum, shall contain the information required in this section.
- 2 (b) The draft EIS shall contain a summary sheet ~~which~~that concisely discusses the
3 following:
- 4 (1) Brief description of the action;
- 5 (2) Significant beneficial and adverse impacts (including cumulative impacts and
6 secondary impacts);
- 7 (3) Proposed mitigation measures;
- 8 (4) Alternatives considered;
- 9 (5) Unresolved issues; ~~and~~
- 10 (6) Compatibility with land use plans and policies, and listing of permits or
11 approvals; and²⁶¹
- 12 (7) A list of relevant documents, including EAs and EISs, used to identify potential
13 segmentation or cumulative impacts.²⁶²
- 14 (c) The draft EIS shall contain a table of contents.
- 15 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~
16 the²⁶³ purpose and need for the proposed action.
- 17 (e) The draft EIS shall contain a project description which shall include the following
18 information, but need not supply extensive detail beyond that needed for evaluation and
19 review of the environmental impact:
- 20 (1) A detailed map (preferably a United States Geological Survey topographic map,
21 Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a
22 related regional map;
- 23 (2) ~~Statement of objectives~~Objectives of the proposed action²⁶⁴;

24 ²⁶¹ Housekeeping.

25 ²⁶² This list is meant to help readers be aware that the proponent considered other actions that may be
26 relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other
27 documents to the attention of the proponent or decision maker. The list could be included in references,
28 which is already a content requirement.

29 ²⁶³ "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used
30 in a different sense here.

31 ²⁶⁴ "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used
32 in a different sense here.

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- 1 (3) General description of the action's technical, economic, social, cultural,²⁶⁵ and
2 environmental characteristics;
3 (4) Use of public state or county funds or lands for the action;
4 (5) Phasing and timing of the proposed action;
5 (6) Summary of technical data, diagrams, and other information necessary to permit
an
6 evaluation of potential environmental impact by commenting agencies and
the
76 public; and
87 (7) Historic perspective.

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Commented [s21]: Unclear what this is, former use/history of property?

- 98 (f) The draft EIS shall describe in a separate and distinct section reasonable²⁶⁶ alternatives
409 which that could attain the objectives of the action, regardless of cost, in sufficient detail
4110 to explain why they were rejected and for alternatives that were eliminated from detailed
4211 study, a brief ly discussion of the reasons for eliminating them²⁶⁷. The section shall include
a

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4312 rigorous exploration and objective evaluation of the environmental impacts of all such
4413 alternative actions. Particular attention shall be given to alternatives that might enhance
4514 environmental quality or avoid, reduce, or minimize some or all of the adverse
4615 environmental effects, costs, and risks of the proposed action. Examples of alternatives
include:

- 4716 (1) The alternative of no action;
4817 (2) Alternatives requiring actions of a significantly different nature which that would
4918 provide similar benefits with different environmental impacts;
2019 (3) Alternatives related to different designs or details of the proposed actions which
2420 that would present different environmental impacts;
2221 (4) The alternative of postponing action pending further study; and,
2322 (5) Alternative locations for the proposed action project.

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2423 In each case, the analysis shall be sufficiently detailed to allow the comparative
2524 evaluation of the environmental benefits, costs, and risks of the proposed action and
2625 each reasonable alternative. For any agency actions, the discussion of alternatives shall
2726 include, where relevant, those alternatives not within the existing authority of the agency.

- 2827 (g) The draft EIS shall include a description of the environmental setting, including a
2928 description of the environment in the vicinity of the action, as it exists before
3029 commencement of the proposed action, from both a local and regional perspective.
Special
3130 emphasis shall be placed on environmental resources that are rare or unique to the
3231 region and the project site (including natural or human-made resources of historic,

3332 ²⁶⁵ Adds cultural to the characteristics, in line with Act 50 (2000).

3433 ²⁶⁶ Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate

3534 all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss

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~~3635~~ the reasons for their having been eliminated.

~~3736~~²⁶⁷ Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate

~~3837~~ all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss

~~3938~~ the reasons for their having been eliminated.

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1 cultural.²⁶⁸ archaeological, or aesthetic significance); specific reference to related
2 projects, public and private, existent or planned in the region shall also be included for
3 purposes of examining the possible overall cumulative impacts of such actions.
4 Proposing agencies and applicants shall also identify, where appropriate, population and
5 growth characteristics of the affected area, ~~and any population and growth assumptions~~
6 used to justify the action, ~~and determine any~~²⁶⁹ secondary population and growth
7 impacts resulting from the proposed action and each of the ~~its~~ identified alternatives. In
8 essential that the sources of data used to identify, qualify, or evaluate any and all
9 environmental consequences be expressly noted in the draft EIS²⁷⁰.

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10 (h) The draft EIS shall include a ~~statement~~ description²⁷¹ of the relationship of the proposed
11 action to land use and resource²⁷² plans, policies, and controls for the affected area.
12 Discussion of how the proposed action may conform to or conflict with objectives and
13 specific terms of approved or proposed land use and resource²⁷³ plans, policies, and
14 controls, if any, for the area affected shall be included. Where a conflict or inconsistency
15 exists, the ~~statement~~ draft EIS²⁷⁴ shall describe the extent to which the agency or
16 applicant has reconciled its proposed action with the plan, policy, or control, and the
17 reasons why the agency or applicant has decided to proceed, notwithstanding the
18 absence of full reconciliation. The draft EIS shall also contain a list of necessary
19 approvals, required for the action, from governmental agencies, boards, or commissions
20 or other similar groups having jurisdiction. The status of each identified approval shall
21 also be described.

22 (i) The draft EIS shall include ~~a statement~~ an analysis²⁷⁵ of the probable impact of the
23 proposed action on the environment, and impacts of the natural or human environment
24 on the action. ~~project, which~~ This analysis shall include consideration of all phases of the
25 action and
26 consideration of all consequences on the environment; including direct and indirect
27 effects ~~shall be included~~²⁷⁶. The interrelationships and cumulative environmental impacts
28 of the proposed action and other related and existing ~~?~~ projects shall be discussed in the
29 draft EIS. ~~It~~
30 ~~should be realized~~ The draft EIS should recognize²⁷⁷ that several actions, in particular

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²⁶⁸ Adds cultural, in line with Act 50 (2000).

²⁶⁹ Housekeeping.

²⁷⁰ Housekeeping.

²⁷¹ Removes the word statement, which is a technical word in chapter 343, HRS, that refers to an EIS.

Uses "description" similar to other paragraphs.

²⁷² Includes natural resource plans such as water management plans.

²⁷³ Includes natural resource plans such as water management plans.

²⁷⁴ Clarifies that this applies to draft EISs.

²⁷⁵ Removes the word statement, which is a technical word in chapter 343, HRS, that refers to an EIS.

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38 Emphasizes that an analysis is important for the impact discussion.

39 ²⁷⁶ Housekeeping.

40 ²⁷⁷ Housekeeping.

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1 those that involve the construction of public facilities or structures (e.g., highways,
2 airports, sewer systems, water resource projects, etc.) may well stimulate or induce
3 secondary effects. These secondary effects may be equally important as, or more
4 important than, primary effects, and shall be thoroughly discussed to fully describe the
5 probable impact of the proposed action on the environment. The population and growth
6 impacts of an action shall be estimated if expected to be significant, and an evaluation
7 shall be²⁷⁸ made of the effects of any possible change in population patterns or growth
8 upon the resource base(s), including but not limited to land use, water, and public
services,

9 of the area in question. Also, if the proposed action constitutes a direct or indirect source
10 of pollution as determined by any governmental agency, necessary data regarding these
11 impacts²⁷⁹ shall be incorporated into the EIS. The significance of the impacts shall be
12 discussed in terms of subsections (j), (k), (l), and (m).

13 (j) The draft EIS shall include in a separate and distinct section a description of the
14 relationship between local short-term uses of humanity's environment and the
15 maintenance and enhancement of long-term productivity. The extent to which the
16 proposed action involves trade-offs among short-term and long-term gains and losses
17 shall be discussed. The discussion shall include the extent to which the proposed action
18 forecloses future options, narrows the range of beneficial uses of the environment, or
19 poses long-term risks to health and/or safety. In this context, short-term and long-term do
not
20 necessarily refer to any fixed time periods, but shall be viewed in terms of the
21 environmentally significant consequences of the proposed action.

22 (k) The draft EIS shall include in a separate and distinct section a description of all
23 irreversible and irretrievable commitments of resources that would be involved in the
24 proposed action should it be implemented. Identification of unavoidable impacts and the
25 extent to which the action makes use of non-renewable resources during the phases of
26 the action, or irreversibly curtails the range of potential uses of the environment, shall
27 also be included. The possibility of environmental accidents resulting from any phase of
28 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~
29 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~
30 ~~natural and cultural resources committed to loss or destruction by the action.~~
31 "Resources" shall be construed to also mean the natural and cultural resources
32 irreversibly and irretrievably committed to the action and not only to the labor and
33 materials committed to the action.²⁸⁰

34 (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot
35 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats

36 ²⁷⁸ Housekeeping.

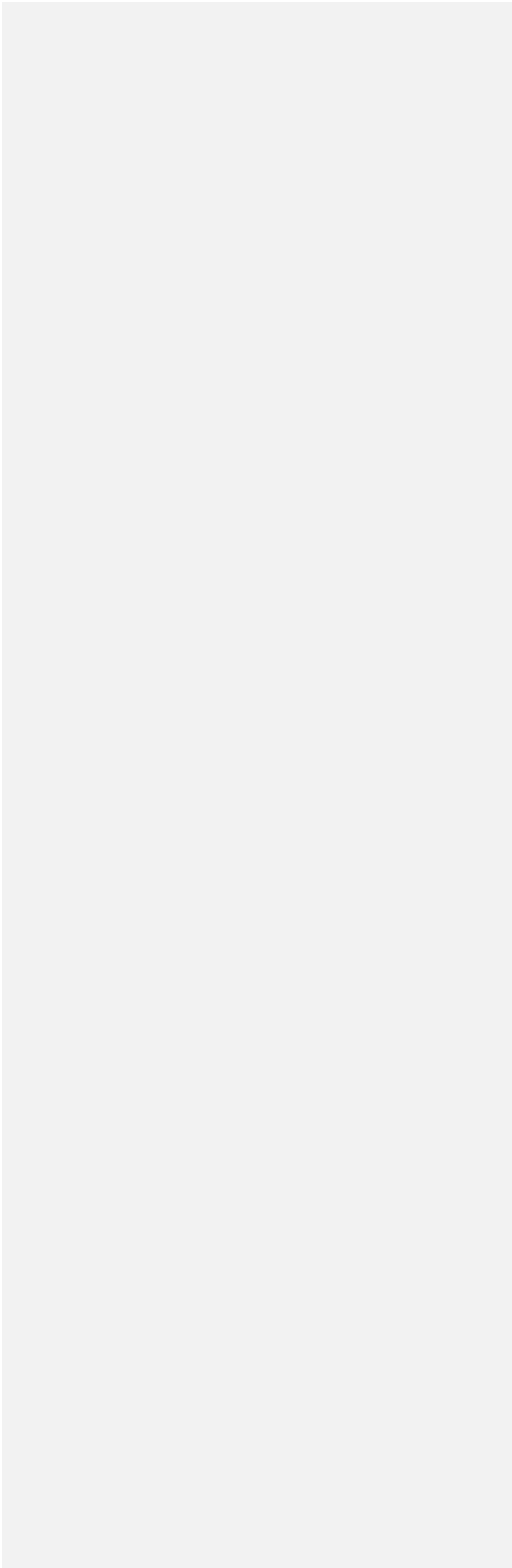
37 ²⁷⁹ Clarifies what the data should be about.

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38 ²⁸⁰ Clarified the language so that everyone, not just agencies, understand the use of the term "resources".



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1 to public health, or other consequences adverse to environmental goals and guidelines
2 established by environmental response laws, coastal zone management laws, pollution
3 control and abatement laws, and environmental policy ~~such as that including those~~²⁸¹
4 found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J,
5 342L, 342N, 342P, and 344, HRS, ~~shall be included, including and~~²⁸² those effects
6 discussed in other ~~actions-subsections~~ of this paragraph ~~section~~²⁸³ which ~~that~~ are
7 adverse and unavoidable under the proposed action. Also, the rationale for proceeding
8 with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in
9 this section. The draft EIS shall indicate what other interests and considerations of
10 governmental policies are thought to offset the adverse environmental effects of the
11 proposed action. The ~~statement EIS~~ shall also indicate the extent to which these stated
12 countervailing benefits could be realized by following reasonable alternatives to the
13 proposed action that would avoid some or all of the adverse environmental effects.

- 14 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or
15 reduce ~~impact impacts~~²⁸⁴, including provision for compensation for losses of cultural,
16 community, historical, archaeological, fish and wildlife resources, including the
17 acquisition of land, waters, and interests therein. Description of any mitigation measures
18 included in ~~the an~~ action plan to reduce significant, unavoidable, adverse impacts to
19 insignificant levels, and the basis for considering these levels acceptable, shall be
20 included. Where a particular mitigation measure has been chosen from among several
21 alternatives, the measures shall be discussed and reasons given for the choice made.
22 ~~Included. The draft EIS shall include,~~ where possible ~~and appropriate~~²⁸⁵, ~~should be~~²⁸⁶
23 specific reference to the timing of each step proposed to be taken in ~~the any~~²⁸⁷ mitigation
24 process, what performance bonds, if any, may be posted, and ~~what any~~ other provisions
25 ~~are~~ proposed to assure that the mitigation measures will in fact be taken and/or performed.

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- 26 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved
27 issues and contains either a discussion of how such issues will be resolved prior to
28 commencement of the action, or what overriding reasons there are for proceeding
29 without resolving the ~~issues~~ problems.

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- 30 (o) The draft EIS shall include a separate and distinct section that contains a list identifying
31 all governmental agencies, other organizations and private individuals consulted in

²⁸¹ Housekeeping.

²⁸² Housekeeping.

²⁸³ Removes

²⁸⁴ Housekeeping.

²⁸⁵ Removes redundant language.

²⁸⁶ Housekeeping.

²⁸⁷ Changes reference to any mitigation measure process that may result from the analysis.

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1 preparing the statement, and the identity of the persons, firms, or agency preparing the
2 statement, by contract or other authorization, shall be disclosed.

3 (p) The draft EIS shall include a separate and distinct section that contains reproductions of
4 all ~~substantive-written~~ comments and ~~responses~~ made during the ~~consultation process~~
5 ~~thirty-day consultation period pursuant to section 11-200-15, responses to those~~
6 ~~comments, and a summary of any, the EIS public scoping meeting(s).~~²⁸⁸ A list of those
7 persons or agencies who were consulted and had no comment shall be included in the
draft EIS.

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

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10 ²⁸⁸ Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of
11 the public scoping meeting (or meetings).

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§11-200-18 Content Requirements; Final Environmental Impact Statement

1 The final EIS shall consist of:

- 2 (1) The draft EIS ~~prepared in compliance with section 11-200-17, as~~²⁸⁹ revised to
3 incorporate ~~substantive~~²⁹⁰ comments received during the consultation and review
4 processes;
- 5 (2) Reproductions of all ~~letters-written comments~~ received ~~containing substantive~~
6 ~~questions, comments, or recommendations and, as applicable, summaries of any~~
7 ~~scoping meetings held during the consultation and review processes~~²⁹¹;
- 8 (3) A list of persons, organizations, and public agencies commenting on the draft
9 EIS;
- 10 (4) The responses of the applicant or proposing agency to ~~each substantive~~
11 ~~question, comment, or recommendation-written comments~~²⁹² received in the
12 review and consultation processes; ~~and~~²⁹³
- 13 (5) The text of the final EIS ~~which shall be~~²⁹⁴ written in a format ~~which that~~ allows the
14 reader to easily distinguish changes made to the text of the draft EIS.

15 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,
16 343-6)

17 ²⁸⁹ Connects this section with the previous section content requirements.

18 ²⁹⁰ Removes the word for lack of clarity. EIS rules already require a commensurate response to a
19 comment and new language has been added to allow for grouping of identical or similar comments in the
20 way that NEPA allows.

21 ²⁹¹ Aligns language with the EISPN and draft EIS requirements.

22 ²⁹² Removes the word for lack of clarity. EIS rules already require a commensurate response to a
23 comment and new language has been added to allow for grouping of identical or similar comments in the
24 way that NEPA allows.

25 ²⁹³ Housekeeping.

26 ²⁹⁴ Housekeeping.

§11-200-19 Environmental Impact Statement Style

1 In developing the ~~draft and final~~²⁹⁵ EISs, preparers shall make every effort to convey the required
2 information succinctly in a form easily understood, both by members of the public and by public
3 decision-makers, ~~giving paying more attention to the substance of the information conveyed~~
~~rather~~ than to
4 the particular form, or length, ~~or detail~~²⁹⁶ of the ~~statement EIS~~. The scope of the ~~statement EIS~~
5 may vary with the scope of the proposed action and its anticipated impacts. Data and analyses in
6 an EIS
~~statement~~ shall be commensurate with the importance of the impacts, and less important material
7 may be summarized, consolidated, or simply referenced. ~~Statements EISs~~ shall indicate at
8 appropriate points in the text any underlying studies, reports, and other information obtained
9 and considered in preparing the ~~statement EIS~~, including cost benefit analyses and reports
10 required under other legal authorities. Care shall be taken to concentrate on important issues
11 and to ensure that the ~~statement EIS~~ remains an essentially self-contained document, capable of
12 being understood by the reader without the need for undue cross-reference.

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

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14 ²⁹⁵ Clarifies this section applies to draft and final EISs.

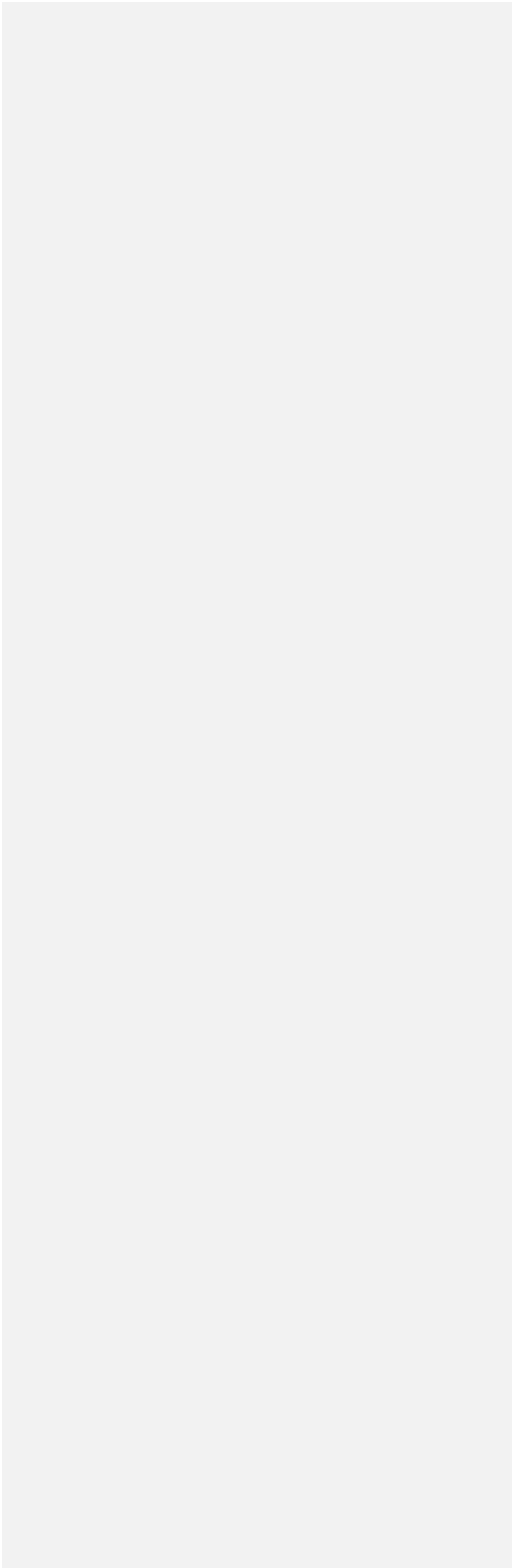
15 ²⁹⁶ Removes detail because detail is already discussed as being commensurate with the potential for

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16 impact.



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§11-200-20 Filing of an Environmental Impact Statement

- 1 (a) The proposing agency or applicant shall file the original (signed)²⁹⁷ draft EIS with the
2 accepting authority, ~~along with a minimum number of copies determined by the~~
3 ~~accepting authority~~²⁹⁸. Simultaneously, ~~a minimum number of four copies of~~²⁹⁹ the draft
4 EIS shall be filed with the office.
- 5 (b) The proposing agency or applicant shall file the original (signed) final EIS with the
6 accepting authority, ~~along with a minimum number of copies determined by the~~
7 ~~accepting authority~~³⁰⁰. Simultaneously, ~~four copies of~~³⁰¹ the final EIS shall be filed with
8 the office.
- 9 (c) ~~An EIS may be filed at any time at the office by the proposing agency or applicant in~~
10 ~~accordance with section 11-200-3.~~³⁰²
- 11 (~~c~~³⁰³) The proposing agency or applicant shall sign and date the original copy of the draft or
12 final EIS and shall indicate that the ~~statement EIS~~ and all ancillary documents were
13 prepared under the signatory's direction or supervision and that the information
14 submitted, to the best of the signatory's knowledge fully addresses document content
15 requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate.
- 16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

17 ²⁹⁷ Removes "original, signed" as it does not make sense for digital documents.
18 ²⁹⁸ Removes minimum number of copies requirement as it does not make sense for digital documents.
19 ²⁹⁹ OEQC only needs one copy, not four.
20 ³⁰⁰ Removes minimum number of copies requirement as it does not make sense for digital documents.
21 ³⁰¹ OEQC only needs one copy, not four.
22 ³⁰² Removes the paragraph because the language is unnecessary.
23 ³⁰³ Renumbers the paragraph.

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§11-200-21 Distribution

1 The office shall be responsible for the publication of the notice of availability of the EIS in its
2 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with
3 jurisdiction or expertise in certain areas relevant to various actions) ~~and a list of public~~
4 ~~depositories, which shall include public libraries, where copies of the statements shall be~~
5 ~~available, and to the extent possible, the~~ The³⁰⁴ proposing agency or applicant shall make
6 copies of the EIS available to individuals requesting the EIS. The office's distribution list may be
7 developed cooperatively among the applicant or proposing agency, the accepting authority, and
8 the office; provided that³⁰⁵ the office shall be responsible for determining the final list. The
9 applicant or proposing agency shall directly distribute the required copies to those on the
10 distribution list after the office has verified to the applicant or proposing agency the accuracy of
11 the distribution list. ~~For final statements, the agency or applicant shall give the commenter an~~
12 ~~option of requesting a copy of the final EIS or portions thereof.~~³⁰⁶

13 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-5,
14 343-6)

15 ³⁰⁴ Removes outdated depositories requirement as all documents and determinations are available online
16 to anyone.

17 ³⁰⁵ Housekeeping.

18 ³⁰⁶ Removes outdated requirement to provide the commenter with an option to request the document or a
19 portion of it as all documents and determinations are available online to anyone.

§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 Addenda³⁰⁷

1 (a) Public review shall not substitute for early and open discussion with interested persons
2 and agencies,³⁰⁸ concerning the environmental impacts of a proposed action. Review of
3 the draft³⁰⁹ EIS shall serve to provide the public and other agencies an opportunity to
4 discover the extent to which a proposing agency or applicant has examined
5 environmental concerns and available alternatives.

6 (b) The period for public review and for submitting written comments shall commence ~~as of~~
7 ~~from~~ on the date ~~that~~³¹⁰ notice of availability of the draft EIS is initially issued in the
8 periodic
9 bulletin and shall continue for a period of forty-five days. Written comments to the
10 approving agency or accepting authority, whichever is applicable, with a copy of the
11 comments to the applicant or proposing agency, shall be received or postmarked to the
12 approving agency or accepting authority, within ~~said the~~³¹¹ forty-five-day comment³¹²
13 period. Any comments outside of the forty-five day comment period need not be
14 responded to nor
15 considered ~~or responded to~~.

16 (c) The proposing agency or applicant shall respond ~~in writing~~³¹³ to the comments received
17 or postmarked during the forty-five-day review period and incorporate the comments and
18 responses in the final EIS. The response to comments shall include:
19 (1) Point-by-point discussion of the validity, significance, and relevance of
20 comments; and
21 (2) Discussion as to how each comment was evaluated and considered in ~~planning~~
22 ~~the proposed action preparing the final EIS~~³¹⁴.
23 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.
24 Response letters reproduced in the text of the final EIS shall indicate verbatim changes
25 that have been made to the text of the draft EIS. The response shall describe the

26 ³⁰⁷ Rephrases title so that it is clearer that the whole section is about draft EISs.

27 ³⁰⁸ Housekeeping.

28 ³⁰⁹ Clarifies that the document is a draft EIS.

29 ³¹⁰ Housekeeping.

30 ³¹¹ Housekeeping.

31 ³¹² Clarifies that the forty-five days is for the comment period.

32 ³¹³ Removes phrase because the response must be in the final EIS, which is written.

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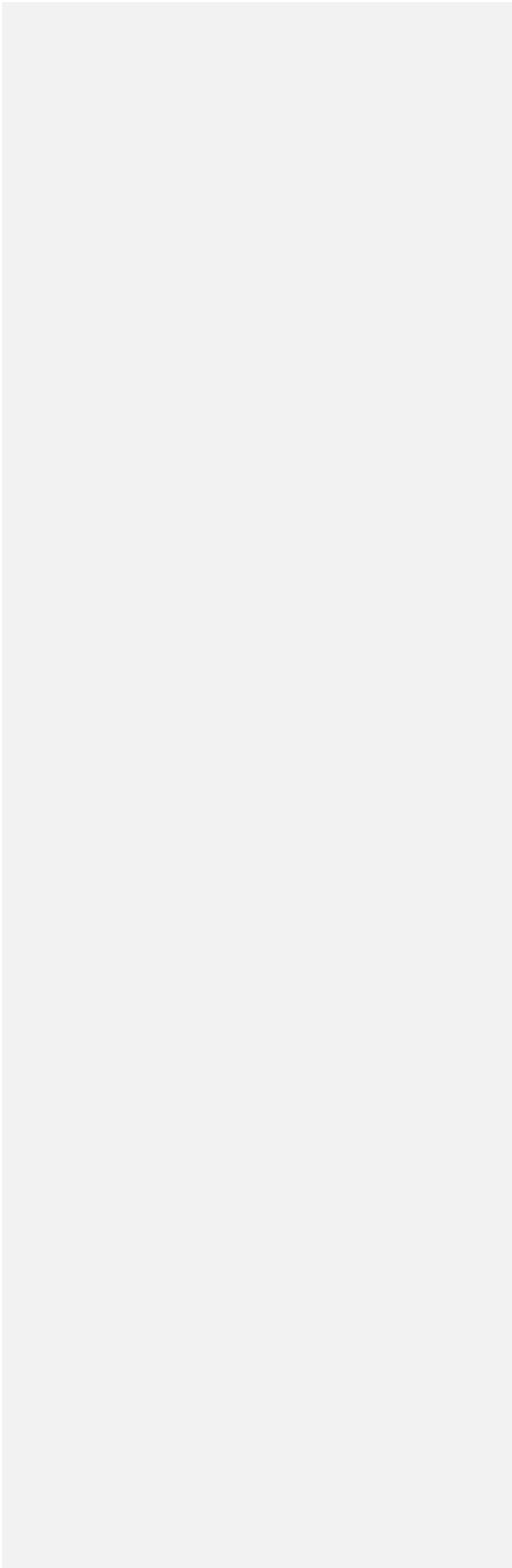
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~~3130~~³¹⁴ Focus on how the comment is addressed in the final EIS rather than just action.



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1 disposition of significant environmental issues raised (e.g., revisions to the proposed
2 ~~project action~~ to mitigate anticipated impacts or objections, etc.). In particular, ~~the any~~
3 issues raised

4 when the applicant's or proposing agency's position is at variance with recommendations
5 and objections raised in the comments shall be addressed in detail, giving reasons why
6 specific comments and suggestions were not accepted, and factors of overriding
7 importance warranting an override of the suggestions. If a number of comments are
8 identical or very similar, the proposing agency or applicant may group the comments and
9 prepare a single standard response for each group. The comments must be attached to
10 the final EIS regardless of whether the agency or applicant believes they merit individual
discussion in the body of the final EIS.³¹⁵

- 11 (d) An addendum ~~document~~³¹⁶ to a draft environmental impact statement EIS shall
12 reference the original draft ~~environmental impact statement EIS to which~~³¹⁷ it attaches to
13 ³¹⁸ and comply with all applicable filing, public review, and comment requirements set
14 forth in subchapter 7, beginning with section 11-200-14³¹⁹.

15 [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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16 ³¹⁵ Because the responses are included in the final EIS, it is not necessary to send an individual response
17 letter to each person who comments. The requirement to send a response to every individual person
18 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via
19 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with
20 NEPA practice, which allows grouping of identical or similar comments and providing one response that
21 covers the issues raised in the identical or similar comments. Because individual responses would no
22 longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

23 ³¹⁶ Removes the word document as it is unnecessary.

24 ³¹⁷ Housekeeping.

25 ³¹⁸ Housekeeping.

26 ³¹⁹ Clarifies that an addendum must begin with the general provisions and consultation prior to filing a
27 draft EIS (i.e., and EISPN).

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§11-200-23 Acceptability

- 1 (a) Acceptability of a ~~statement~~ final EIS³²⁰ shall be evaluated on the basis of whether the
2 ~~statement final EIS~~³²¹, in its completed form, represents an informational instrument
3 which fulfills the ~~definition of an EIS intent and provisions of C~~chapter 343, HRS,³²² and
4 adequately discloses and describes all identifiable environmental impacts and
5 satisfactorily responds to review comments.
- 6 (b) A ~~statement final EIS~~³²³ shall be deemed to be an acceptable document by the accepting
7 authority or approving agency only if all of the following criteria are satisfied:
8 (1) The procedures for assessment, consultation process, review, and the
9 preparation and submission of the ~~statement EIS, from proposal of the action to~~
10 publication of the final EIS,³²⁴ have all been completed satisfactorily as specified
11 in this chapter;
12 (2) The content requirements described in this chapter have been satisfied; and
13 (3) Comments submitted during the review process have received responses
14 satisfactory to the accepting authority, or approving agency, and have been
15 appropriately³²⁵ incorporated ~~in into the statement final EIS~~³²⁶, and comments and
16 responses have been appended to the final EIS³²⁷.
- 17 (c) For actions proposed by agencies, the proposing agency may request the office to make
18 a recommendation regarding the acceptability or non-acceptability of the EIS. In all
19 cases involving state funds or lands, the governor or ~~an the governor's~~³²⁸ authorized
20 representative shall have final authority to accept the EIS. In cases involving only county
21 funds or lands, the mayor of the respective county or ~~an the mayor's~~³²⁹ authorized
22 representative shall have final authority to accept the EIS. The accepting authority shall
23 take prompt measures to determine the acceptability or non-acceptability of the
24 proposing agency's statement. In the event that a proposed ~~the~~ action involves ~~both state~~
and

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25 ³²⁰ Clarifies that the document is a final EIS.

26 ³²¹ Clarifies that the document is a final EIS.

27 ³²² Clarifies that the EIS must meet all applicable elements of environmental review.

28 ³²³ Clarifies that the document is a final EIS.

29 ³²⁴ Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates
30 environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

31 ³²⁵ Recognizes that not all comments are incorporated into an EIS.

32 ³²⁶ Clarifies that the document is a final EIS.

33 ³²⁷ Distinguishes comments responded to and resulted in changes to the final EIS and ensuring
34 comments and responses are appended to the document.

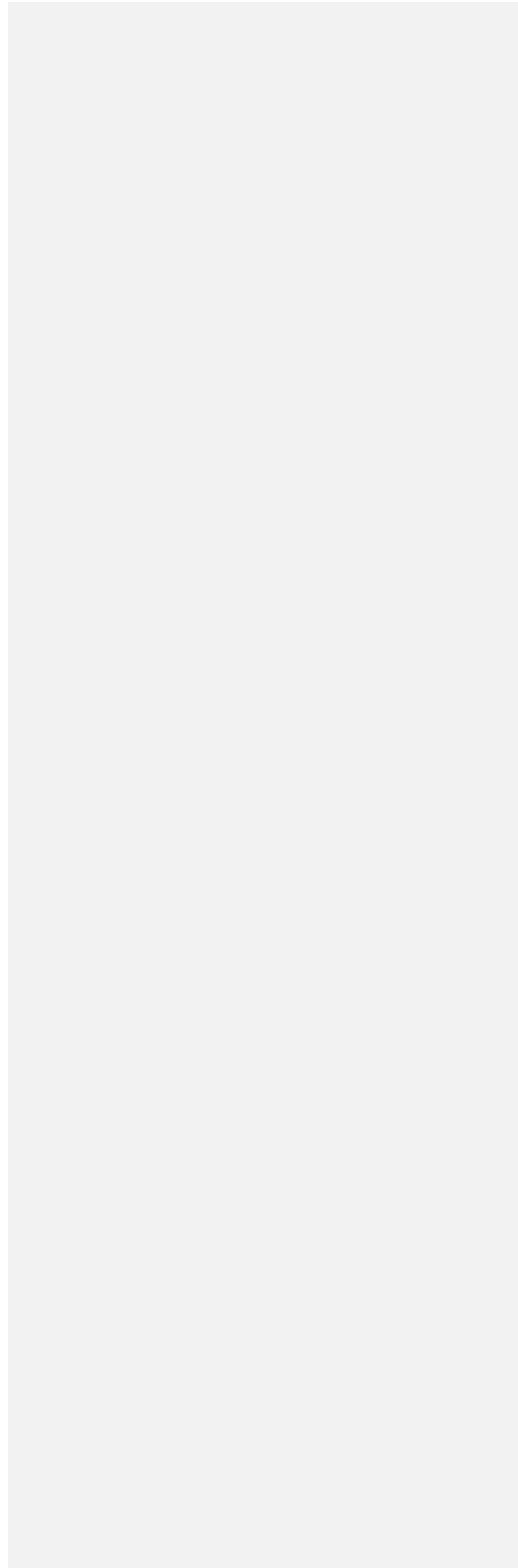
35 ³²⁸ Housekeeping.

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36 ³²⁹ Housekeeping.



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1 county lands ~~or~~ funds, or both state and county lands and funds,³³⁰ ~~the governor or an~~
2 the governor's³³¹
authorized representative shall have final authority to accept the EIS.

3 (d)³³² Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate
4 accepting authority with both the proposing agency and the office. For any non-accepted
5 EIS, the notice shall contain specific findings and reasons for non-acceptance. The office
6 shall publish notice of the determination of acceptance or non-acceptance in the periodic
7 bulletin in accordance with section 11-200-3. Acceptance of a required statement shall
8 be a condition precedent to the use of state or county lands or funds in implementing the
9 proposed action.

10 (de) For actions proposed by applicants requiring approval from an agency, the applicant or
11 accepting authority, which is the approving agency,³³³ may request the office to make a
12 recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If
13 the office decides to make a recommendation, it shall submit the recommendation to the
14 applicant and the approving agency within the thirty-day period requiring an approving
15 agency to determine the acceptability of the final EIS ~~and as~~³³⁴ described in section
16 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the
17 agency shall notify the applicant of its determination, and provide specific findings and
18 reasons. The agency shall also provide a copy of this determination to the office for
19 publication ~~of a notice~~³³⁵ in the periodic bulletin. Acceptance of the required EIS shall be
20 a condition precedent to approval of the request and commencement of the proposed
21 action. An approving agency shall take prompt measures to determine the acceptability
22 or non-acceptability of the applicant's statement. The agency shall notify the applicant
23 and the office of the acceptance or non-acceptance of the final EIS within thirty days of
24 the final EIS submission to the agency,^{336, 337} provided that the thirty-day period may, at
25 the request of the applicant, be extended at the request of the applicant³³⁸ for a period
26 not to exceed fifteen days. Any such ~~The~~ request shall be made to the accepting authority
27 in
writing. Upon receipt of an applicant's written³³⁹ request for an extension of the thirty-day
28 acceptance period, the accepting authority shall notify the office and applicant in writing

Commented [s22]: This is made redundant by the sentence that follows it.

29 ³³⁰ Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and
30 funds.

31 ³³¹ Housekeeping.

32 ³³² Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

33 ³³³ Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

34 ³³⁴ Housekeeping.

35 ³³⁵ Housekeeping.

36 ³³⁶ Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant;
37 not when the office publishes the final EIS in the periodic bulletin.

38 ³³⁷ Housekeeping.

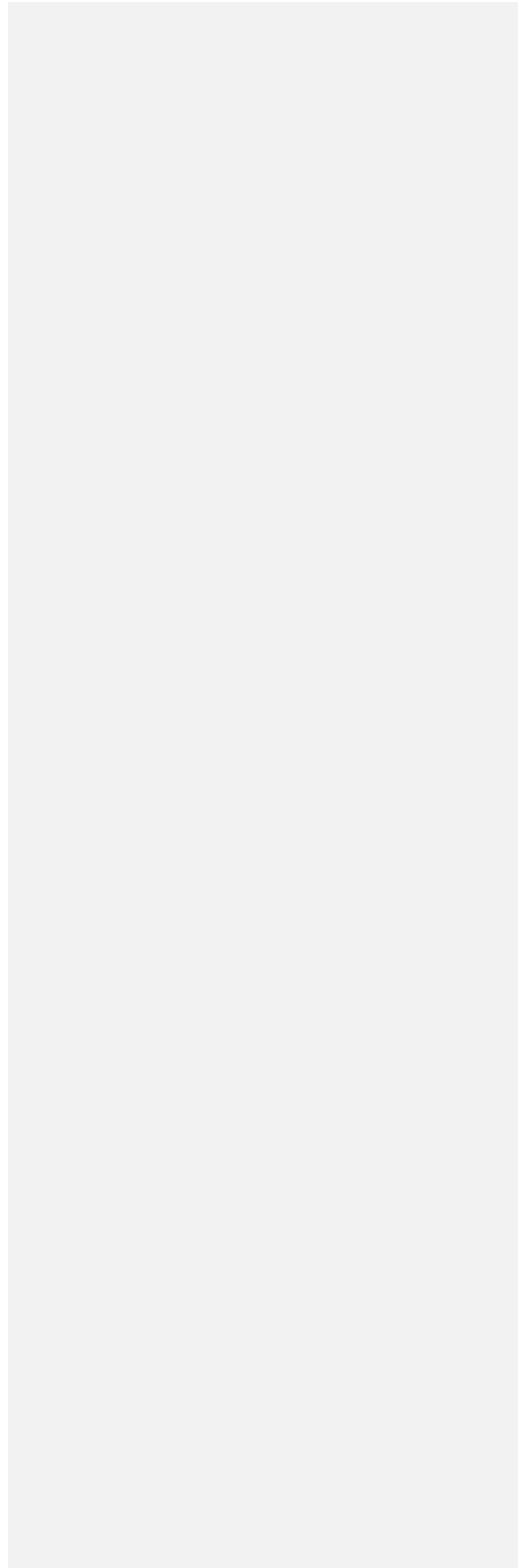
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39 ³³⁸ Housekeeping.

40 ³³⁹ Connects to the previous sentence at the request shall be made in writing.



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1 of its decision to grant or deny the request. The notice shall be accompanied by a copy
2 of the applicant's request. An extension of the thirty-day acceptance period shall not be
3 ~~allowed~~ **granted** merely for the convenience of the accepting authority. In the event that
4 the
5 agency fails to make a determination of acceptance or non-acceptance ~~for~~ **of the**
6 ~~statement~~ **EIS**
7 within thirty days of the receipt of the final EIS, then the **EIS statement** shall be deemed
8 ~~accepted~~.

7 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision
8 shall take the form of a revised draft EIS ~~document~~³⁴⁰ which shall fully address the
9 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the
10 changes made. The requirements for filing, distribution, publication of availability for
11 review, acceptance or non-acceptance, and notification and publication of acceptability
12 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,
13 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised
14 draft EIS ~~and the subsequent revised final EIS~~³⁴¹ shall be evaluated for acceptability on
15 the basis of whether it satisfactorily addresses the findings and reasons for
16 ~~non-acceptance~~.

17 (fg) A proposing agency or applicant may withdraw an EIS by ~~simultaneously~~³⁴² sending a
18 letter-written ~~notification~~³⁴³ to the office ~~and to the accepting authority~~³⁴⁴ informing the
19 office of the ~~proposing~~³⁴⁵ agency's or applicant's withdrawal. Subsequent resubmittal of
20 the EIS shall meet all requirements for filing, distribution, publication, review,
21 acceptance, and notification as a ~~new draft~~³⁴⁶ EIS.

22 [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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Commented [s23]: This is so unfair, the applicant gets a 15-day extension for any reason at all, so long as submitted in writing, while the agency's functioning appears of no account, and automatic approval ensues. I hate this phrase no matter where it appears. There should at least be a "for good cause shown" provision for agencies.

Commented [s24]: Is the second layer of review limited to this? whether they cured the first round of faults?

³⁴⁰ Housekeeping.

³⁴¹ Added revised final EIS as the next step following a revised draft EIS.

³⁴² Requires the office and accepting authority to be notified of the withdrawal at the same time.

³⁴³ Removes the requirement for a letter and simply requires written notification, such as by email.

³⁴⁴ Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

³⁴⁵ Clarifies that the agency withdrawing the proposal is the proposing agency.

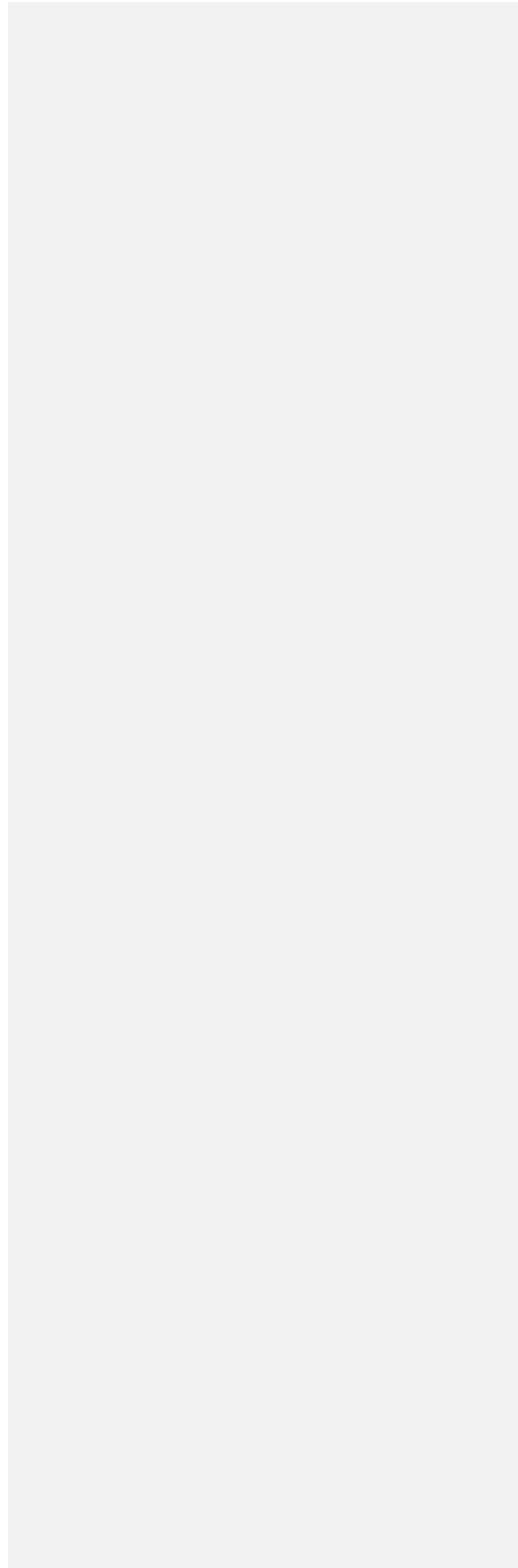
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³⁴⁶ Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.



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1 Subchapter 8 Appeals

§11-200-24 Appeals to the Council

2 An applicant, within sixty days after a³⁴⁷ non-acceptance determination by the approving agency
3 under section 11-200-23³⁴⁸ of a ~~statement~~ a final EIS³⁴⁹ by an agency³⁵⁰, may ~~to choose to~~³⁵¹
4 appeal the non-acceptance to the council, which within ~~thirty-sixty~~³⁵² days of receipt of the
5 appeal, shall notify the applicant of its determination to affirm the approving agency's
6 non-acceptance or to reverse it³⁵³. ~~The council chairperson shall include the appeal on the~~
7 agenda of the council meeting immediately following the chairperson's receipt of the appeal.
8 The council shall be deemed to have received the appeal on the date of the meeting for which
9 the appeal is agendized.³⁵⁴ In any affirmation or reversal of an appealed non-acceptance, the
10 council shall provide the applicant and the agency with specific findings and reasons for its
11 determination. The agency shall abide by the council's decision. Pursuing an appeal ~~by to the~~
12 council ~~does not abrogate an applicant's option under section 343-7(c), HRS, to bring judicial action.~~³⁵⁵
13 [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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14 ³⁴⁷ Housekeeping.

15 ³⁴⁸ Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

16 ³⁴⁹ Clarifies that the document is a final EIS.

17 ³⁵⁰ Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

18 ³⁵¹ "Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.

19 ³⁵² Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities
20 under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

21 ³⁵³ Clarifies the Council's determination.

22 ³⁵⁴ Connects receipt of the notice to appeal with the timing of the next EC meeting.

23 ³⁵⁵ Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even
24 while appealing in front of the council. This provision is in case the council is unable to obtain quorum
25 after an applicant appeals to the council.

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1 Subchapter 9 National Environmental Policy Act

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

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

5 (1) The applicant or agency, upon discovery of its proposed action being subject to
6 both Chapter 343, HRS, and the ~~National Environmental Policy Act-NEPA~~³⁵⁷,
7 shall
8 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.~~³⁵⁸

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

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

20 (24) ~~The National Environmental Policy Act-NEPA~~³⁶¹ requires that ~~draft~~³⁶² statements
21 EISs³⁶³ be prepared by the responsible federal agency. In the case of actions for
22 which an EIS pursuant to the NEPA has been prepared by the responsible

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Commented [s25]: You seem to uniformly avoid using "statement" in favor of EA or EIS...so not clear what this refers to.

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23 ³⁵⁶ Housekeeping.

24 ³⁵⁷ Housekeeping.

25 ³⁵⁸ Housekeeping.

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

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

33 ³⁶¹ Housekeeping.

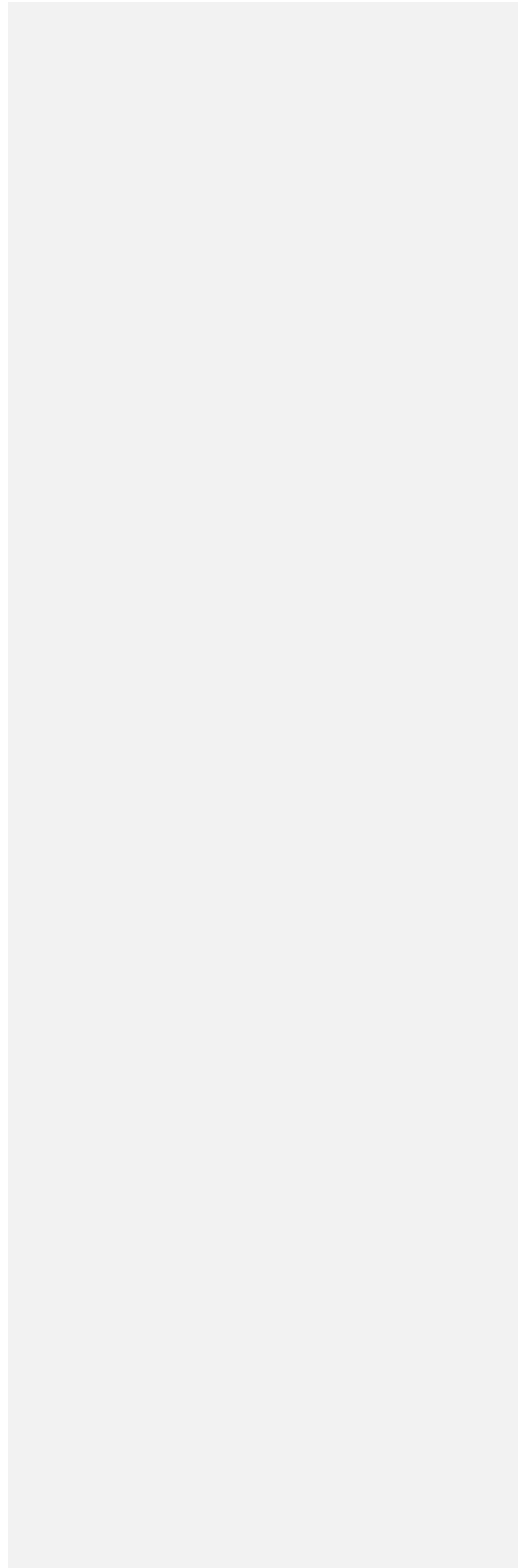
34 ³⁶² Language is applicable to draft and final.

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35 ³⁶³ Housekeeping.



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1 federal agency, the draft and final federal statements may be submitted to comply
2 with this chapter,³⁶⁴ so long as the federal EIS satisfies the EIS content
3 requirements of this chapter and is not found to be inadequate under the NEPA
4 by a court; by the council on environmental quality (CEQ) (or is at issue in
5 pre-decision referral to CEQ) under the NEPA regulations; or by the administrator
6 of the United States Environmental Protection Agency ("EPA") under section 309
7 of the
8 Clean Air Act, 41 U.S.C. 1857.³⁶⁵ The responsible federal agency's supplemental
9 EIS requirements shall apply in these [?] cases in place of this chapter's
10 supplemental
11 EIS requirements.³⁶⁶

10 (5)³⁶⁷ When the responsibility of preparing an EIS is delegated to a state or county
11 agency, this chapter shall apply in addition to federal requirements under the
12 ~~National Environmental Policy Act NEPA~~³⁶⁸. The office and state or county
13 agencies shall cooperate with federal agencies to the fullest extent possible to
14 reduce duplication between federal and state requirements. This cooperation, to
15 the fullest extent possible, shall include joint ~~environmental impact statements-~~
16 ~~EISs~~ with concurrent public review and processing at both levels of government.
17 Where federal law has ~~environmental impact statement-EIS~~ requirements in
18 addition to ~~but not in conflict with~~ this chapter, the office and agencies shall
19 cooperate in fulfilling the requirements so that one document shall comply with all
20 applicable laws.

21 (36) In all actions where the use of state land or funds is proposed, the final ~~statement~~
22 EIS shall be submitted to the governor or an authorized representative. In all
23 actions when the use of county land or funds is proposed, the final ~~statement-EIS~~
24 shall be submitted to the mayor, or an authorized representative. The final
25 ~~statement-EIS~~ in these instances shall first be accepted by the governor or mayor
26 (or an authorized representative), prior to the submission of the same to the
27 ~~Environmental Protection Agency or~~³⁶⁹ responsible federal agency.

28 ³⁶⁴ Based on Massachusetts' language that federally-prepared EISs are sufficient for the purposes of
29 Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses
30 this chapter's content requirements. In this case, state and county agencies can provide the information
31 to the federal preparer for inclusion in its document rather than the state or county agency preparing a
32 second document.

33 ³⁶⁵ Adds a clause from Washington WAC to ensure that the federally-prepared statement meets federal
34 standards for quality.

35 ³⁶⁶ Clarifies that in the case of joint documents, the preparation of any supplemental documentation would
36 be due to federal requirements and that HEPA supplemental requirements would not apply.

37 ³⁶⁷ Separated the existing language into two paragraphs; one about when a federal agency prepares the
38 EIS and one about when a federal agency delegates the responsibility to a state or county agency.

39 ³⁶⁸ Housekeeping.

Commented [s26]: Same comment...

Commented [s27]: Is this a different "council"?

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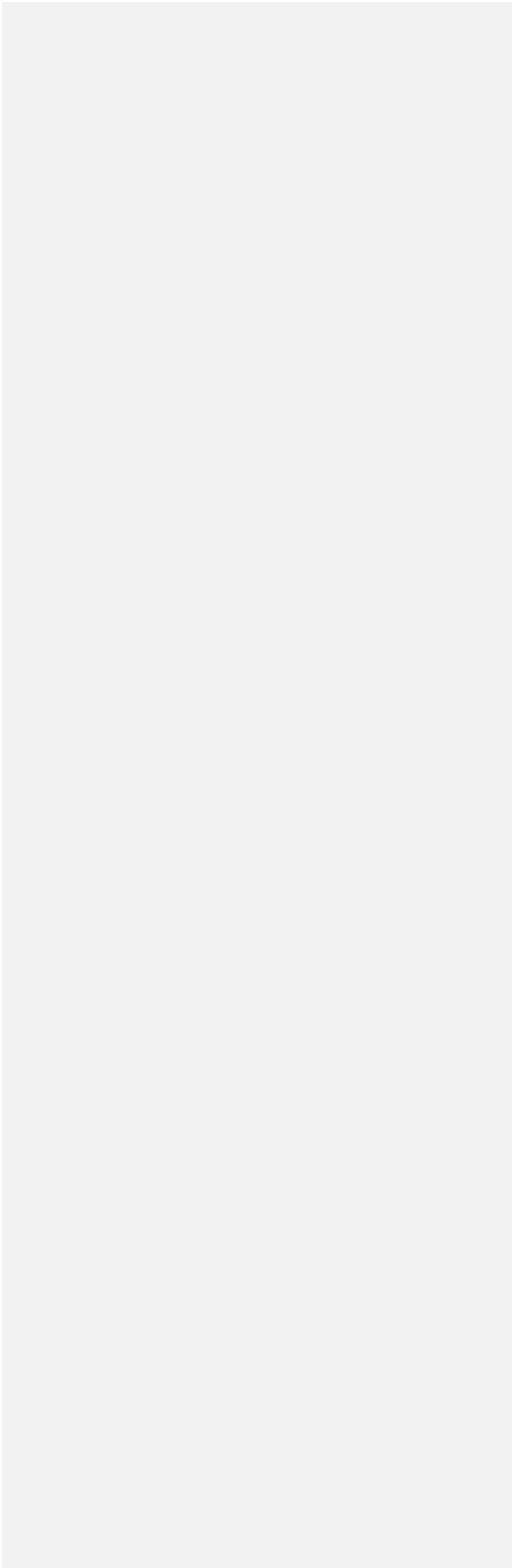
Commented [s28]: And if there is a conflict, what happens?

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40 ³⁶⁹ Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the
41 role of the Environmental Protection Agency in these circumstances.



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1 (4Z) Any acceptance obtained pursuant to ~~paragraphs (1) to (3) this section~~³⁷⁰ shall
2 satisfy Chapter 343, HRS, and no other ~~statement EIS~~ for the proposed action
3 shall be required.

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

5 ³⁷⁰ Changes language to "this section" instead of the enumerated paragraphs because existing
6 paragraphs have been rearranged and additional paragraphs have been added.

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1 Proposed New Subchapter X Programmatic EISs

Proposed §11-200-XX Programmatic Environmental Impact Statements³⁷¹

- 2 (a) Proposing agencies may prepare a PEIS ~~on the~~ ~~by adopting~~ ~~on of~~ a comprehensive plan
3 prepared in accordance with relevant laws. Impacts of individual actions proposed to be
4 carried out in conformance with these adopted plans and regulations and the thresholds
5 or conditions identified in the PEIS may require no or limited further review.
- 6 (b) Approving agencies may allow applicants to prepare a PEIS ~~on the~~ ~~by adopting~~ ~~on of~~ a
7 comprehensive plan prepared in accordance with relevant laws. Impacts of individual
8 actions proposed to be carried out in conformance with these adopted plans and
9 regulations and the thresholds or conditions identified in the PEIS may require no or
10 limited further review.
- 11 (c) Upon acceptance of a final ~~programmatic~~ PEIS:
12 (1) If a PEIS evaluates project-level issues such as precise project footprints or
13 specific design details, no further compliance with this chapter is required if a
14 subsequent proposed action will be carried out in conformance with the
15 conditions and thresholds established for such actions in the PEIS.
16 (2) Further ~~C~~chapter 343, HRS, environmental review must be prepared if a
17 subsequent proposed action was not addressed in the PEIS or the subsequent
18 proposed action exceeds the thresholds evaluated in the PEIS, and the
19 subsequent action may have a significant impact on the environmental. Further
20 review may be in the form of an EIS, EA, or exemption ~~request~~, for specific
2420 components
of the proposal.

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22 ³⁷¹ Provides directions on when environmental review covers a program type of action. Focus is on EISs
23 and when analysis is sufficient versus further, project-level review is warranted.

Proposed §11-200-XX Content Requirements: Draft Programmatic Environmental Impact Statement³⁷²

- 1 (a) The content requirements for a PEIS shall be the same as those for an EIS set forth in
2 subchapter 7, with the understanding that the level of detail in a PEIS may be less than
3 that of a project-specific EIS. The level of detail in a PEIS must be sufficient to allow
4 informed
5 choice among planning-level alternatives and to develop broad mitigation strategies. A
6 PEIS should examine the interaction among proposed projects or plan elements, and
7 assess the cumulative effects. Like a project-level EIS, a PEIS must also include an
8 examination of alternatives.
- 9 (b) The PEIS may be broader and more general than a project-specific EIS and omit
10 evaluating
11 project-level issues that are not yet ready for decision at the planning level, or it may
12 evaluate project-level issues such as precise project footprints or specific design details.
- 13 (c) A PEIS should discuss the logic and rationale for the choices advanced. It may also
14 include an assessment of specific impacts if such details are available and specific
15 mitigation measures. It may be based on conceptual information in some cases. It may
16 discuss in general terms the constraints and sequences of events likely to result in a
narrowing of future
options. It may present and analyze in general terms hypothetical scenarios that are
likely to occur.

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17 ³⁷² Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not
18 have the same level of detail as a project-specific EIS.

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1 Subchapter 10 Supplemental Statements

§11-200-26 Supplemental EIS³⁷³ General Provisions

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

- 12 (1) The project has changed substantively in the following characteristics: size,
13 scope, use, location or timing, among other things, which may have a significant
14 effect; or³⁷⁴
15 (2) New information indicating significant effects, which was not known and could not
16 have been known at the time the EIS was accepted as complete, becomes
17 available.³⁷⁵

18 (b) In the case of newly discovered information, the decision to require preparation of a
19 supplemental EIS must be based on the following criteria:

- 20 (1) The information can be from any source.
21 (2) The information must be newly discovered. It cannot be information that could
22 have been included in ~~comments~~ filed in the original draft EIS or final EIS.
23 (3) The information must be important, indicating ~~probably~~ significant environmental
24 impacts.
25 (4) The information must not have been addressed in the prior EIS, or must have
26 been inadequately addressed.³⁷⁶

27 (c) As long as there is no change in a proposed action or ~~new~~ information indicating
28 significant
29 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.

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

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

33 ³⁷⁵ Adds a change in knowledge as a potential reason to require a supplemental EIS.

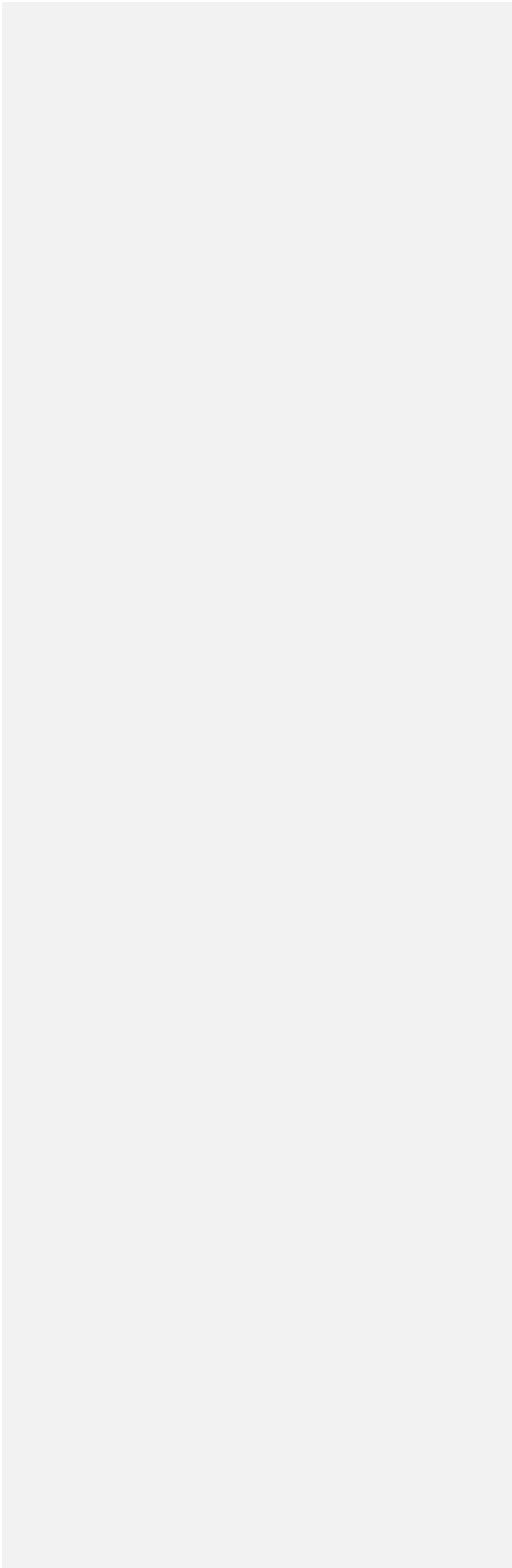
34 ³⁷⁶ Adds qualifications to what can be considered new knowledge so that not any change in knowledge
35 could be used as a reason to require a supplemental EIS.

Commented [s30]: "comments" or "analysis"?

Commented [s31]: "the likelihood of...?"

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



§11-200-27 Supplemental EIS³⁷⁷ Determination of Applicability

1 The accepting authority or approving agency in coordination with the original accepting authority
2 shall be responsible for determining whether a supplemental ~~statement EIS~~ is required. If a
3 ~~period of five years has elapsed since the acceptance of the final EIS, and the proposed action~~
~~project or~~
4 ~~program~~ has not substantially commenced, the accepting authority or approving agency shall
5 formally re-evaluate the need for a supplemental ~~statement EIS~~ and make a determination of
6 whether a supplemental ~~statement EIS~~ is required. A written summary of this evaluation and—
the³⁷⁸
7 This determination will be submitted to the office for publication in the periodic bulletin.
8 Proposing agencies or applicants shall prepare for public review supplemental ~~statements EISs~~
9 whenever the proposed action for which a ~~statement EIS~~ was accepted has been modified to
10 the extent that new or different environmental impacts are anticipated. A supplemental
11 ~~statement EIS~~ shall be warranted when the scope of an action has been substantially increased,
12 when the intensity of environmental impacts will be increased, when the mitigating measures
13 originally planned ~~are will not to be fully implemented~~, or where new circumstances or evidence
14 have
brought to light different or likely increased environmental impacts not previously dealt with.
15 [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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16 ³⁷⁷ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and
17 programmatic EISs).

18 ³⁷⁸ Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may
19 not be required, but also puts a boundary on when that period is no longer relevant but setting substantial

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20 commencement as a point where supplemental EISs may no longer be required. A definition for
21 substantial commencement is proposed in section 11-200-2.

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§11-200-28 Supplemental EIS³⁷⁹ Contents

1 The contents of the supplemental ~~statement~~ EIS shall be the same as required by this chapter
2 for the EIS and may incorporate by reference unchanged material from the same; however, in
3 addition, it shall fully document the proposed changes from the original EIS, including changes
4 in ambient conditions or available information that have a bearing on a proposed action or its
5 impacts, the positive and negative aspects of these changes, and shall comply with the content
6 requirements of section 11-200-16 as they relate to the changes.

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

8 ³⁷⁹ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and
9 programmatic EISs).

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§11-200-29 Supplemental EIS³⁸⁰ Procedures

- 1 The requirements of the thirty-day consultation, filing of public notice, distribution, the forty-five-day
- 2 public review, comments and response, and acceptance procedures, shall be the same for the
- 3 supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.
- 4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

5 ³⁸⁰ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and
6 programmatic EISs).

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1 Subchapter 11 Severability

§11-200-30 Severability

2 If any provision of this chapter or the application thereof to any person or circumstance is held
3 invalid, the invalidity shall not affect other provisions or applications of this chapter which can be
4 given effect without the invalid provision or application; and to this end, the provisions of this
5 chapter are declared to be severable.

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

Note

7 Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact
8 Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]
9 Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the
10 repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996
11 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995,
12 November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu
13 Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii
14 Tribune-Herald and Molokai Dispatch on October 12, 1995.

15 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It
16 has not been compiled.

From: Bianca Isaki
To: [HI Office of Environmental Quality Control](#)
Subject: Comment on Agenda Item No. 4 for 8/22/2017 meeting
Date: Monday, August 7, 2017 5:35:52 PM

Aloha Council Members,

I'm writing to comment on your Permitted Interaction Group's proposed amendments to HAR chap. 11-200. Apologies for the last minute testimony.

These were my concerns upon a brief reading:

(1) removal of the inter-agency consultation requirement for exemptions. HAR 11-200-8. Particularly with land uses, it is important that DLNR or ADC be required to examine, for instance, health impacts of agricultural practices.

2) removal of "cultural resources" from significant impacts listed in 11-200-12(b)(1). The rationale is that the amendment coincides with the definition of significant effect under 11-200-2, but "significant effect" under 11-200-2 also includes adverse impacts on the cultural practices of the community and state. Addition of "cultural practices" in line with economic and social welfare may also under-emphasize the continuity between cultural and natural resources in actual protected practices.

3) removal of documentation requirement from for exemptions that have OEQC concurrence and on exemption lists, HAR 11-200-8(e). The documentation requirement is often the only way the public can learn about the agency rationale for its exemption determinations.

4) request to clarify potential tension between HAR 11-200-8(a)(1), which provides for permits etc. for uses not beyond "previously existing" use, and HAR 11-200-8(b), which says exemption does not apply where the "cumulative impact of planned successive actions in the same place, over time, is significant[.]" This seems to be how some revocable permits get reissued for significant actions, despite having cumulative impacts.

Mahalo for the work you're doing.

Yrs,
Bianca

--

Bianca Isaki, Ph.D., Esq.
mobile 808-[REDACTED]

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Report of the Environmental Council Permitted Interaction Group

Preliminary Draft of Proposed Revisions to Hawai'i Administrative Rules Title 11 Department of Health Chapter 200 Environmental Impact Statement Rules

Prepared for the July 27, 2017 Environmental Council Meeting

Prepared by the Environmental Council Permitted Interaction Group established on February 23, 2016, with the support of the Office of Environmental Quality Control. The Permitted Interaction Group members are: Scott Glenn, Onaona Thoene, Ron Terry, and Mahina Tuteur. Deputy Attorney General Diane Agor advised the Permitted Interaction Group.

Background

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

In 2011, the public formally petitioned the Environmental Council (Council) to update HAR Chapter 11-200. The Council initiated consultation with state and county agencies for recommendations on issues to address and language revisions. In 2012, the Council released a preliminary draft of revisions to HAR Chapter 11-200 (referred to as "Version 1") that incorporated proposed revisions from previous Council efforts and issues raised by agencies and the public. The Council also distributed an Excel file called a "comment matrix" to receive feedback on Version 1. Agencies and the public (including applicants, consultants, and nonprofit organizations) submitted comments via the comment matrix. The Council organized the feedback into a master comment matrix and tasked the Rules Committee with addressing the feedback and making revisions to the language. The Rules Committee met regularly over the course of 2012-2014 to revise Version 1. However, due to various administrative challenges, including maintaining quorum, the Council was not able to complete its work.

In February 2016, following Governor Ige's appointment of seven members to the Council, the Council addressed its challenges and resumed moving forward on revisions to HAR Chapter 11-200. As part of this effort, the Council wanted to recognize the extensive outreach and drafting that the 2012 Council conducted.

At the February 23, 2016 Council meeting, the Council established a Permitted Interaction Group (PIG) to draft revisions to HAR Chapter 11-200. The PIG was to investigate and consider specific language for inclusion in HAR Chapter 11-200, which would not be for the purpose of

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decision making, but to be brought to the Rules Committee for its consideration and decision making to make recommendations to the EC.

Permitted Interaction Group Principles

The PIG drafted language within the principles established by the Council:

- Be consistent with the intent and language of Hawai'i Revised Statutes Chapter 343.
- Align statute, case law, and practice wherever feasible.
- Increase clarity for the process and requirements.
- Use the National Environmental Policy Act for language and guidance where applicable.

Permitted Interaction Group Process

Following the Council's establishment of the PIG, the PIG set a monthly or biweekly meeting schedule to review the previous Council work. The PIG reviewed the 2012 draft rules language, public comments in the comment matrix the 2012 Rules Committee produced, and responses to the public comments that the Rules Committee developed over 2012-2014. The PIG categorized the comment matrix into two groups: 1) comments resolved and direction provided and 2) outstanding comments still needing policy direction or draft language. For the former group, the PIG integrated the language the resolved language into a draft it called Version 1.1. For the second group, the PIG developed language in consultation with the Rules Committee and the Office of Environmental Quality Control (OEQC). Further, the PIG developed language in response to requests from the Rules Committee and OEQC for issues that arose since 2012. At the July 11, 2017 meeting, the Council agreed that the PIG could present its report directly to the Council at its next meeting.

Permitted Interaction Group Recommendations

This report synthesizes Version 1.1 with additional revisions the PIG made to address unresolved comments from the 2012 Council, direction the Rules Committee gave on conflicting comments or recent issues, and current topics the OEQC raised.

The following revisions are the recommendations of the PIG to the Council as a baseline starting point for discussion going forward. Among the themes addressed are:

- "Housekeeping" - revisions that modernize grammar and clarify language.
- Clarifying roles and responsibilities at various stages of environmental review.
- Modernizing submittals and deadlines to recognize electronic communication.
- Setting clearer thresholds for exemptions and the role of exemption lists.
- Clarifying when and how to proceed to directly preparing an EIS instead of an EA.
- Clarifying when and how to do programmatic EISs and supplemental EISs.
- Responding to comments in EAs and EISs.
- Conducting joint federal-state environmental review.

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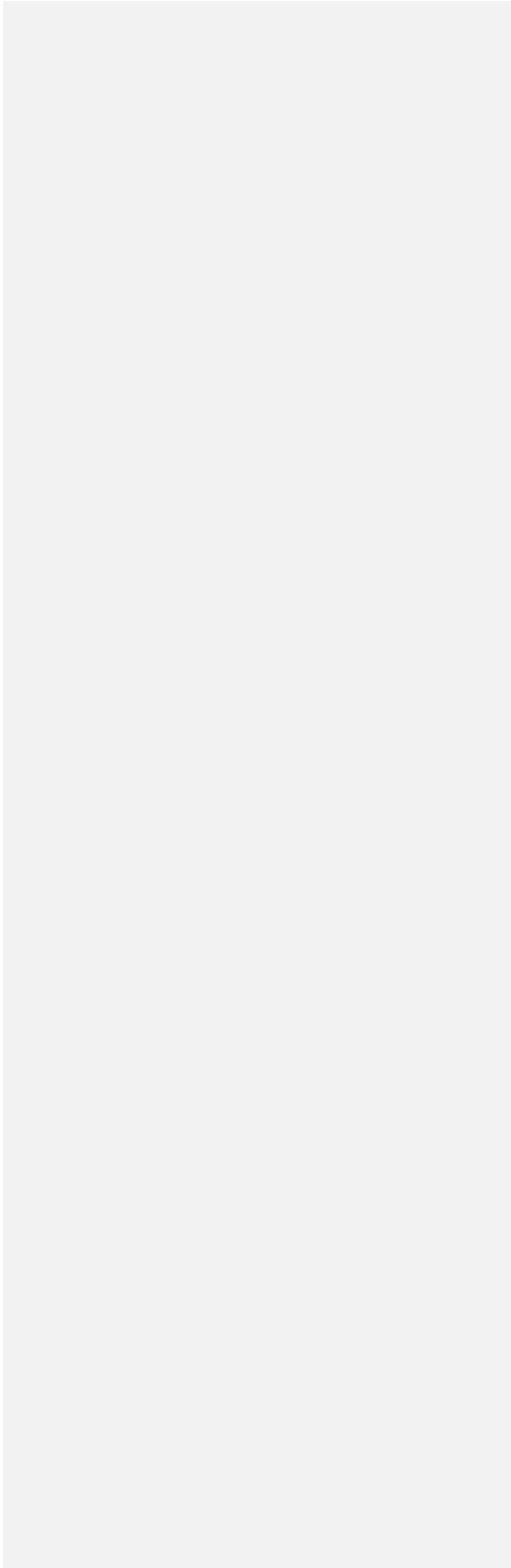
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HAR Chapter 11-200 Environmental Impact Statement Rules

Subchapter 1 Purpose

§11-200-1 Purpose

Chapter 343, Hawaii Revised Statutes, (HRS)¹, establishes a system of environmental review at the state and county levels ~~which~~ that² shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications of contents of environmental assessments and environmental impact statements, and criteria and definitions of statewide application.

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

¹ Housekeeping.

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

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Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

As used in this chapter:

"Acceptance" means a formal determination ~~of acceptability~~³ that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement (EIS),⁴ ~~adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement as prescribed by section 11-200-23.~~⁵ Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of acceptance is required prior to implementing or approving the action.

"Accepting authority" means the ~~final~~⁶ official who⁷ or agency that ~~determines the acceptability of the EIS document~~ makes the determination that a final EIS required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an EIS⁸.

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

"Addendum" means an attachment to a draft environmental assessment or draft ~~environmental impact statement~~ EIS⁹, prepared at the discretion of the proposing agency or approving agency, and distinct from a supplemental statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft ~~environmental assessment~~ EA¹⁰ or the draft ~~environmental impact statement~~ EIS already filed with the office.

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

"Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests approval from an agency for a proposed action.

³ Housekeeping.

⁴ Housekeeping.

⁵ 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.

⁶ Removes "final" because it does not contribute additional meaning to the definition.

⁷ Housekeeping.

⁸ Clarifies that the accepting authority role is about the acceptability about a final EIS.

⁹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

¹⁰ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

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

"Approving agency" means an agency that issues an approval prior to ~~actual~~¹³ implementation of an ~~applicant~~¹⁴ action, determines the need for an EA or EIS, and issues the exemption, FONSI, or acceptance determination.¹⁵ The approving agency may be an accepting authority for an applicant final EIS.¹⁶

"Concurrence" means the discretionary consent of the council to an agency exemption list.¹⁷

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

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

Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.¹⁸

¹¹ Does not add meaning to sentence so removing the word.

¹² Removed "discretionary consent" from the definition and made it a standalone definition that mirrors the statute.

¹³ Does not add meaning to sentence so removing the word.

¹⁴ Approving agencies are only in the case of applicants.

¹⁵ The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

¹⁶ In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

¹⁷ 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.

¹⁸ Definition removed from "approval" and made standalone. Mirrors HRS § 343-2 language and expands on ministerial definition (which is existing language in HAR § 11-200-2).

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"Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)¹⁹ determination.

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate or delayed²⁰. Effects may also include those effects resulting from actions ~~which~~ that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"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 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.

"Emergency action" means ~~an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding such immediate action.~~ a project or program that normally would be subject to chapter 343, HRS, but is not because of a state of emergency declared by the governor.²¹

"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural,²² or aesthetic significance.

"Environmental assessment" or "EA"²³ means a written evaluation ~~to determine whether an action may have a significant environmental effect.~~ that serves to provide sufficient evidence and analysis to determine whether an action may have a significant environmental effect.²⁴ It, together with a FONSI, satisfies chapter 343, HRS, when no EIS is necessary, and facilitates

¹⁹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

²⁰ Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

²¹ Redefines an emergency action to be an action undertaken during a particular emergency proclamation issued by the governor.

²² Adds cultural to the definition of environment to make the definition in line with Act 50 (2000).

²³ Adds common abbreviation for use throughout the rules.

²⁴ 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.

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preparation of an EIS when one is necessary and the proposing agency, based on its judgment and experience, has not previously determined that it would proceed directly with the preparation of an EISPN, or the agency, based on its judgment and experience, has not previously authorized the applicant to choose to proceed directly with the preparation of an EISPN.²⁵

~~"Environmental impact" means an effect of any kind, whether immediate or delayed, on any component of the environment.~~²⁶

~~"Environmental impact statement," "statement," or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with subchapter 7 of this chapter.~~²⁷ The initial statement EIS²⁸ filed for public review shall be referred to as the draft ~~environmental impact statement~~ EIS and shall be distinguished from the final ~~environmental impact statement~~ EIS, which is the document that has incorporated the public's comments and the responses to those comments. The final ~~environmental impact statement~~ EIS is the document that shall be evaluated for acceptability by the respective²⁹ accepting authority.

~~"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.~~³⁰

"Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a public action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project.

"Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft ~~environmental assessment~~ EA and in support of either a FONSI or a ~~preparation notice~~ EISPN³¹ determination; ~~or the environmental assessment submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.~~

²⁵ Incorporates direct-to-EIS pathway into definition of an EA.

²⁶ Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.

²⁷ Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

²⁸ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

²⁹ Unnecessary language so recommend removing.

³⁰ Removes the definition because the concept of "classes of actions" is removed in section 8.

³¹ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

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"Finding of no significant impact" or "FONSI" means a determination by an agency based on an EA that an action not otherwise exempt does not have the potential for a significant effect on the environment and therefore does not require the preparation of an EIS. A FONSI is required prior to implementing or approving the action.³²

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

"National Environmental Policy Act" or "NEPA"³³ means the National Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. §4321-4347, as amended.

~~"Negative declaration" or "finding of no significant impact" means a determination by an agency based on an environmental assessment that a given action not otherwise exempt does not have a significant effect on the environment and therefore does not require the preparation of an EIS. A negative declaration is required prior to implementing or approving the action.~~³⁴

"Office" means the office of environmental quality control.

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

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

"Power generating facility" means:

1. A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
2. An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.³⁵

~~"Preparation notice," or "EIS preparation notice,"³⁶ or "EISPN"³⁷ means a determination based on an environmental assessment that the subject that an³⁸ action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement EIS, based on either an EA or an agency's judgment and experience that the~~

³² Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

³³ Adds common abbreviation for use throughout the rules.

³⁴ Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

³⁵ Adds definition from HRS § 343-2.

³⁶ Housekeeping.

³⁷ Adds common abbreviation for use throughout the rules.

³⁸ Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

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proposed action may have a significant effect on the environment and therefore authorizes the preparation of an EIS without first requiring an EA.³⁹

Commented [RT1]: I read this sentence as "the action.....therefore authorizes..." that needs fixin'

"Primary impact," or "primary effect," or "direct impact,"⁴⁰ or "direct effect" means effects ~~which~~ that are caused by the action and occur at the same time and place.

A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a number of separate actions 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 actions contemplated by a single agency or applicant; (3) separate actions having generic or common impacts; (4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or 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 project or program over a large geographic area.⁴¹

"Proposing agency" means any state or county agency that proposes an action under chapter 343, HRS.⁴²

"Secondary impact," or "secondary effect," or "indirect impact,"⁴³ or "indirect effect" means effects which that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, and water,⁴⁴ and other natural systems, including ecosystems.

Commented [RT2]: As these all mean the same thing.....I think it would be better if we said effects....or if we say "means an effect that is..."

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the state's State's⁴⁵ environmental policies or long-term environmental goals and guidelines as established by law, or⁴⁶ adversely affect the economic or social welfare, cultural practices of the community and State,⁴⁷ or are otherwise set forth in section 11-200-12 of this chapter⁴⁸.

Commented [RT3]: I hate this definition, but it is in the statute. It does not make syntactical sense. Is there some way we could at least do that? Start it like this: Significant effects or significant impacts irrevocably commit....., curtail....., etc. Stick "the sum of effects in there somewhere.

³⁹ Adds the direct-to-EIS pathway to the definition of an EISPN.

⁴⁰ Housekeeping.

⁴¹ Adds a definition to go along with new sections on how to do environmental review for an action this is a "program". Most environmental review focuses on projects. By providing language on a programmatic look, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension between earliest practicable time with project specificity.

⁴² Added definition because the term is used frequently throughout the rules.

⁴³ Housekeeping.

⁴⁴ Housekeeping.

⁴⁵ Housekeeping.

⁴⁶ Housekeeping.

⁴⁷ Updates language to match Act 50 (2000) on cultural practices.

⁴⁸ Housekeeping.

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"Substantial commencement" means that a project or program has reached the stage where its last approval has been granted, or, for government programs for which an approval is not required, the project or program has advanced to the point where financial commitments are in place and scheduled and design is essentially complete.⁴⁹

"Supplemental statement EIS" means an ~~additional environmental impact statement~~ updated EIS⁵⁰ 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 have⁵¹ changed substantively in size, scope, intensity, use, location, or timing, among other things.

"Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.⁵²

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

⁴⁹ 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.

⁵⁰ Housekeeping.

⁵¹ Incorporates substantial commencement into the definition and emphasizes that changes can apply to the proposed action, the environment, or knowledge (ties to supplemental sections).

⁵² Adds definition from HRS § 343-2.

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Subchapter 3 Periodic Bulletin

§11-200-3 Periodic Bulletin

- (a) The office shall inform the public through the publication of a periodic bulletin of the following:
- (1) Notices filed by agencies of the availability of ~~environmental assessments~~ EAs and appropriate addendum documents for review and comments;
 - (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or not required;
 - (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and appropriate addendum documents for review and comments;
 - (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
 - (5) Other notices required by the rules of the council.
- ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin shall also be sent to the state library system and other depositories or clearinghouses.⁵³~~
- ~~(b)~~⁵⁴ The bulletin shall be issued on the eighth and twenty-third days of each month. All agencies and applicants submitting draft ~~environmental assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNs⁵⁵, ~~environmental impact statements~~ EISs, acceptance or nonacceptance determinations, addenda, supplemental ~~statements~~ EISs, supplemental ~~preparation notices~~ EISPNs, revised documents, withdrawals, and other notices required to be published in the bulletin shall submit such documents or notices to the office before the close of business ~~eight four~~⁵⁶ working business⁵⁷ days prior to the issue date. In case the deadline falls on a state holiday or ~~nonworking non-business~~⁵⁸ day, the deadline shall be the next working business⁵⁹ day.
- ~~(c)~~ All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form ~~which that~~ provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the proposed action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal

⁵³ This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

⁵⁴ Housekeeping. Renumbers paragraphs.

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

⁵⁶ OEQC does not need eight business days anymore to prepare the periodic bulletin.

⁵⁷ Housekeeping.

⁵⁸ Housekeeping.

⁵⁹ Housekeeping.

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coordinates or other geographic data⁶⁰; applicable permits, including discretionary approvals requiring preparation of the document under chapter 343, HRS.⁶¹ whether the proposed action is an agency or an applicant action; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses and contact persons as applicable of the accepting authority, the proposing agency, the approving agency, the applicant, and the consultant; and a brief narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey the full impact of the proposed action to the public.

- (ed) The office may provide recommendations to the agency responsible for the ~~environmental assessment~~ EA or EIS regarding any applicable administrative content requirements set forth in this chapter.
- (fe) The office may, on a space available basis, publish other notices not specifically related to chapter 343, HRS.

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

⁶⁰ 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.

⁶¹ Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

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Subchapter 4 Responsibilities

**§11-200-4 Identification of Approving Agency and⁶²
Accepting Authority**

- (a) Whenever an agency proposes an action, the ~~final~~⁶³ authority to accept ~~a statement an~~ EIS shall rest with:
- (1) The governor, or ~~an~~ the governor's⁶⁴ authorized representative, whenever an action proposes the use of state lands or ~~the use of~~⁶⁵ state funds or,⁶⁶ whenever a state agency proposes an action ~~within~~ under⁶⁷ section 11-200-6(b); or
 - (2) The mayor, or ~~an~~ the mayor's⁶⁸ authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.
- In the event that an action involves state and county lands, funds, or both lands and funds, the governor or the governor's authorized representative shall have authority to accept the EIS.⁶⁹
- (b) Whenever an applicant proposes an action, the authority for requiring an EA or⁷⁰ ~~statements EIS, and for~~ making a determination regarding any required EA, and⁷¹ accepting any required ~~statements EIS that have been prepared~~ shall rest with the approving⁷² agency ~~initially receiving and agreeing that initially received and agreed~~⁷³ to process the request for an approval. With respect to EISs, the approving agency is also called the accepting authority.⁷⁴

⁶² Expand the content of this section to also identify the agency with responsibility in cases of EAs.

⁶³ Removes the word final because it does not add to the meaning of the sentence.

⁶⁴ Housekeeping.

⁶⁵ Housekeeping.

⁶⁶ Housekeeping.

⁶⁷ Housekeeping.

⁶⁸ Housekeeping.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ Adds EAs to the identification of which agency has responsibility. Language is phrase so that the agency can make a FONSI or EISPN determination.

⁷² Housekeeping. Clarifies the agency is called the approving agency.

⁷³ Housekeeping.

⁷⁴ Clarifies that approving agency is the accepting authority for applicants.

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(c)⁷⁵ In the event that there is more than one agency that is proposing the action or, in the case of applicants,⁷⁶ 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(c)~~ chapter 343⁷⁷, HRS, the office, after consultation with the agencies involved, shall determine which agency is responsible. In making the determination, the office shall ~~take into consideration, including, but not limited to, the following factors~~ consider⁷⁸:

- (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 greatest⁷⁹ access to information; and
- (4) The extent of participation of each agency in the action.

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

⁷⁵ 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.

⁷⁶ Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

⁷⁷ Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

⁷⁸ Housekeeping.

⁷⁹ Helps to distinguish among agencies - all agencies have access to information.

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Subchapter 5 Applicability

§11-200-5 Agency Actions

- (a) For all proposed agency⁸⁰ actions ~~which that~~ are not exempt⁸¹ as defined in section 11-200-8, the proposing⁸² agency shall assess at the earliest practicable time the significance of potential impacts of ~~its actions~~ the proposed agency's action⁸³, including the overall, cumulative impact in light of related past, present, and reasonably foreseeable⁸⁴ actions in the region area affected⁸⁵ ~~and further actions contemplated~~.⁸⁶
- (b) The applicability of chapter 343, HRS, to specific agency proposed actions is conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore, when an agency proposes to implement an action to use state or county lands or funds, it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~⁸⁷
- (c) Use of state or county funds shall include any form of funding assistance flowing from the State or county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.
- (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or planning study for possible future programs or projects ~~which that~~ the agency has not approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future assessment EA or subsequent statement EIS. If, ~~however,~~⁸⁸ the planning and feasibility studies involve testing or other actions ~~which that~~ may have a significant impact on the environment, ~~then~~⁸⁹ an environmental assessment EA or EIS⁹⁰ shall be prepared.
- (e) Any amendment to existing county general plans, however denominated, which may include ~~but not be limited to~~ development plans,⁹¹ or community plans, where the

Commented [RT4]: I think these two words are redundant and should be eliminated.

Commented [RT5]: Add a hyphen here?

⁸⁰ Housekeeping.

⁸¹ Housekeeping.

⁸² Housekeeping.

⁸³ Housekeeping.

⁸⁴ Clarifies what is considered as part of a cumulative look. Language is drawn from NEPA, 40 CFR 1508.7.

⁸⁵ Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

⁸⁶ Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

⁸⁷ Housekeeping. Redundant language.

⁸⁸ Housekeeping.

⁸⁹ Housekeeping.

⁹⁰ Acknowledges direct-to-EIS pathway.

⁹¹ Housekeeping.

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amendment would result in designations other than agriculture, conservation, or preservation,⁹² requires an environmental assessment EA or EIS⁹³. (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.)

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

⁹² Housekeeping.

⁹³ Direct-to-EIS is also an option.

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§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 elements⁹⁴; or
 - (2) Actions that require certain types of amendments to existing county general plans.
- The approving 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.⁹⁵
- (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the agency ~~processing an applicant's request for approval to prepare an environmental assessment~~ the applicant to prepare an EA⁹⁶. There are seven geographical categories, five proposal elements⁹⁷, and two administrative categories.
- (1) The seven 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;
 - (E) Any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
 - (F) Any reclassification of any land classified as conservation district by the state land use commission under chapter 205, HRS; and
 - (G) The construction of a new, or the expansion or modification of an existing helicopter facilities facility⁹⁸ within the State ~~which that~~ by way of their its⁹⁹ activities may ~~affect~~¹⁰⁰ any land classified as conservation district by the

Commented [RT6]: Delete word "processing"?

Commented [RT7]: Not sure about other Counties, but Hawaii County Planning Department, with advice from Corp Counsel, has stated that ANY helicopter facility has the potential to affect the CD,, historic sites, etc. because the chopper can fly over it.

⁹⁴ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

⁹⁵ Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.

⁹⁶ Housekeeping.

⁹⁷ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

⁹⁸ Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

⁹⁹ Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

¹⁰⁰ Housekeeping.

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state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or,¹⁰¹ any historic site as designated 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~~¹⁰²; 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.

(2) The five proposal elements are:

- (A) Wastewater treatment unit, except an individual wastewater system or wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
- (B) Waste-to-energy facility;
- (C) Landfill;
- (D) Oil refinery; or
- (E) Power-generating facility.¹⁰³

(23) The two administrative categories are:

- (A) Any amendment to existing county general plans, however denominated, which may include, but ~~are~~ are not be limited to, development plans,¹⁰⁴ 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)

¹⁰¹ Housekeeping.

¹⁰² Housekeeping. Unnecessary specificity.

¹⁰³ Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

¹⁰⁴ Housekeeping.

§11-200-7 Multiple or Phased Applicant or Agency Actions

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

- (1) The component actions are phases or increments of a larger total undertaking;
- (2) An individual project is a necessary precedent for a larger project;
- (3) An individual project represents a commitment to a larger project; or
- (4) The actions in question are essentially identical and a single ~~statement~~ EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.

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

§11-200-8 Exempt Classes of Action Exemption Notices¹⁰⁵

- (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.¹⁰⁶ ~~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.~~¹⁰⁷ 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 exemption¹⁰⁸ ~~list represents exempt classes of action:~~
- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible minor¹⁰⁹ 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:

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

¹⁰⁶ Incorporates language direction from chapter 343, HRS.

¹⁰⁷ 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.

¹⁰⁸ Replaces "classes" language with "types".

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

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- (A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered,¹¹⁰ not in conjunction with the building of two or more such units;
- (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
- (C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
- (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;
- (4) Minor alterations in the conditions of land, water, or vegetation;
- (5) Basic data collection, research, experimental management, and resource and infrastructure testing and¹¹¹ evaluation activities ~~which that~~ do not result in a serious or major disturbance to an environmental resource;
- (6) Construction or placement of minor structures accessory to existing facilities;
- (7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
- (8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register ~~as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS~~¹¹²;
- (9) Zoning variances except shoreline set-back variances; ~~and~~¹¹³
- ~~(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel related actions.~~¹¹⁴
- ~~(14)~~¹¹⁵ Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond that previously existing, and for which the legislature has appropriated or otherwise authorized funding¹¹⁶; ~~and~~¹¹⁷
- (11) New construction of affordable housing that only has use of state or county lands or funds as the requirement for undergoing chapter 343, HRS, and as proposed

¹¹⁰ Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

¹¹¹ Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

¹¹² Unnecessary language.

¹¹³ Housekeeping.

¹¹⁴ Deletes language because it is addressed at the beginning of paragraph (a).

¹¹⁵ Housekeeping. Renumbering this and subsequent paragraphs.

¹¹⁶ 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.

¹¹⁷ Housekeeping.

Commented [RT8]: Undergoing...hmmmm....undertaking? Complying with? Not sure

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is consistent with existing state urban land classification, existing county residential or mixed use zoning classification, and applicable federal, state, and county development standards.¹¹⁸

Commented [RT9]: Add highlighted word "of" in footnote

- (b) All exemptions under the classes types¹¹⁹ in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.
- (c) Any agency, at any time, may request that a new exemption class type¹²⁰ be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, environmental council rules.
- (d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes types above¹²¹, as long as these lists are consistent with both the letter and intent expressed ~~in these exempt classes here~~¹²² and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.
- (e)¹²³ Actions that are clearly covered by an agency exemption list that has received council concurrence and do not have any potential to produce significant impacts do not require documentation.¹²⁴ Actions with no documentation may still be subject to the public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.¹²⁵
- (f) For an action that an agency considered exempt according to the criteria in paragraph (a) but is not clearly covered by the agency's exemption list, or is on the agency's exemption list but that list has not received council concurrence within the past five years, the agency shall undertake a systematic analysis to determine whether the action

¹¹⁸ Adds affordable housing as an exemption type, with caveats the following caveats: 1) that the only trigger is **of** use 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.

¹¹⁹ Housekeeping.

¹²⁰ Housekeeping.

¹²¹ Housekeeping.

¹²² Housekeeping.

¹²³ Inserts new paragraphs; subsequent paragraphs are renumbered.

¹²⁴ 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.

¹²⁵ 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.

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merits exemption consistent with one or several of the types listed in paragraph (a).¹²⁶
For such actions, the agency shall obtain the advice of outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. An action may not be segmented per section 11-200-7 so as to appear to be consistent with several types listed in paragraph (a).¹²⁷

(eg) Each agency shall maintain records of such¹²⁸ actions, called exemption notices,¹²⁹ which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency's means or publication in the bulletin, whichever of the two is earliest.¹³⁰

(fh) In the event the governor declares a state of emergency pursuant to chapter 127A, HRS,¹³¹ the governor may exempt any affected program or action from complying with this chapter. has authority to suspend laws, including chapter 343, HRS. In such an event, no exemption declaration is required and the proposing agency or approving agency shall file an exemption notice in its records that the emergency action was undertaken pursuant to a specific emergency proclamation.¹³²

Commented [RT10]: Agree about the segmentation but puzzled as to the reference to several types of exemptions. You shouldn't segment even if the set of related actions is consistent with only one type; a legitimate exemption may be consistent with several types.

Commented [RT11]: Should we add "per 11-200-8-f", to reinforce idea that no documentation is needed on 11-200-8-e-type actions?

Commented [RT12]: But the action may not qualify for an exemption, it could need an EA or even an EIS. Is "exemption" really relevant here? Interesting use of the word.

¹²⁶ 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.

¹²⁷ Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

¹²⁸ Housekeeping.

¹²⁹ Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

¹³⁰ 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.

¹³¹ States the name of the statute for emergency proclamations.

¹³² 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.

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

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

¹³³ 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.

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Subchapter 6 Determination of Significance

§11-200-9 Assessment of Agency Actions and Applicant Actions

- (a) For agency actions, except those actions exempt from the preparation of an ~~environmental assessment EA~~ pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:
- (1) Seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals ~~which that~~ the proposing agency reasonably believes ~~to may~~¹³⁴ be affected;
 - (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~ ~~the~~¹³⁵ statutory conditions under section 343-5(a), HRS, ~~that~~¹³⁶ require the preparation of an ~~environmental assessment EA~~;
 - (3) Prepare an ~~environmental assessment EA~~ pursuant to section 11-200-10 of this chapter ~~which shall also identify that identifies~~¹³⁷ potential impacts, ~~evaluate~~ ~~evaluates~~¹³⁸ the potential significance of each impact, and ~~provide provides~~¹³⁹ for detailed study of significant impacts;
 - (4) Determine, after reviewing the ~~environmental assessment EA~~ described in paragraph (3), and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated ~~negative declaration FONSI~~ or an ~~environmental impact statement preparation notice EISPN~~, provided that for an ~~environmental impact statement preparation notice EISPN~~, the proposing agency shall inform the accepting authority of the proposed action;
 - (5) File the appropriate notice of determination (anticipated ~~negative declaration FONSI~~ or ~~environmental impact statement preparation notice EISPN~~ in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form ~~referenced~~¹⁴⁰ in section 11-200-3(d)¹⁴¹, and ~~four~~ copies of¹⁴² the supporting ~~environmental assessment EA~~ (a draft ~~environmental assessment EA~~ for the anticipated ~~negative declaration FONSI~~ or a final ~~environmental assessment EA~~ for the ~~environmental impact statement~~

¹³⁴ Housekeeping.

¹³⁵ Housekeeping.

¹³⁶ Housekeeping.

¹³⁷ Housekeeping.

¹³⁸ Housekeeping.

¹³⁹ Housekeeping.

¹⁴⁰ Housekeeping.

¹⁴¹ Housekeeping.

¹⁴² OEQC only needs one copy, not four.

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- ~~preparation notice EISPN~~) with the office in accordance with sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;
- (6) ~~Distribute~~ Circulate¹⁴³, concurrently with the filing in paragraph (5), the draft ~~environmental assessment EA~~ to other agencies having jurisdiction or expertise as well as citizen groups and individuals ~~which that~~ the proposing agency reasonably believes to ~~may~~¹⁴⁴ be affected;
- (7) Deposit, concurrently with the filing in paragraph (5), one ~~paper~~¹⁴⁵ copy of the draft ~~environmental assessment EA~~ at the nearest state library in each county in which the proposed action is to occur ~~and one paper copy at the Hawaii Documents Center~~¹⁴⁶;
- (8) Receive and respond to public comments in accordance with:
- (A) section 11-200-9.1 for draft ~~environmental assessments EAs~~ for anticipated ~~negative declaration FONSI~~ determinations; or
- (B) section 11-200-15 for ~~environmental assessments EAs~~ for ~~preparation notices EISPNs~~.

For draft ~~environmental assessments EAs~~, the proposing agency shall revise the ~~environmental assessment EA~~ to incorporate public comments as appropriate, and append copies of comment letters and responses in the ~~environmental assessment EA~~ (the draft ~~environmental assessment EA~~ as revised, shall be filed as a final ~~environmental assessment EA~~ as described in section 11-200-11.2); and

- (9) As appropriate, issue either a ~~negative declaration FONSI~~ determination or an ~~environmental impact statement preparation notice EISPN~~ pursuant to the requirements of section 11-200-11.2, ~~provided that for~~ For¹⁴⁷ ~~preparation notice EISPN~~ determinations, the proposing agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.
- (b) For applicant actions, except those actions exempt from the preparation of an ~~environmental assessment EA~~ pursuant to section 343-5, HRS, or those actions ~~which that~~ the approving agency declares exempt pursuant to section 11-200-8, the approving agency shall:
- (1) Require the applicant, at the earliest practicable time, to seek the advice and input of the lead county agency responsible for implementing the county's

¹⁴³ The term "distribute" 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.

¹⁴⁴ Housekeeping.

¹⁴⁵ 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.

¹⁴⁶ 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.

¹⁴⁷ Housekeeping.

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- general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals ~~which that~~ the approving agency reasonably believes to be affected;
- (2) Require the applicant to ~~provide whatever information the approving agency deems necessary to~~¹⁴⁸ complete the preparation of an ~~environmental assessment~~ EA in accordance with section 11-200-10;
- (3) Within thirty days from the date of receipt of the applicant's complete request for approval to the approving agency:
- (A) ~~prepare an environmental assessment pursuant to section 11-200-10; and~~
- (B) ~~determine, after reviewing the environmental assessment and considering the significance criteria in section 11-200-12 whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice;~~
- ~~require the applicant~~¹⁴⁹ to prepare a draft EA pursuant to section 11-200-10;¹⁵⁰
- (4)¹⁵¹ Determine, after reviewing the draft EA and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated FONSI or an EISPN;¹⁵²
- (45) File the appropriate notice of determination (anticipated ~~negative declaration~~ FONSI or ~~environmental impact statement preparation notice~~ EISPN in accordance with section 11-200-11.1 or 11-200-11.2), the completed informational form ~~referenced~~¹⁵³ in section 11-200-3(d)¹⁵⁴ and ~~four copies of the supporting environmental assessment EA (a draft environmental assessment EA for the anticipated negative declaration FONSI or a final environmental assessment EA for the environmental impact statement preparation notice EISPN)~~ with the office in accordance with sections 11-200-3, and 11-200-11.1, or 11-200-11.2, and other applicable sections of this chapter¹⁵⁵;

¹⁴⁸ Narrows the language to focus on the EA on the content requirements.

¹⁴⁹ Shifts the focus of preparation to the applicant per Act 172 (2012).

¹⁵⁰ 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 days of receipt of a request for approval which course of environmental review the applicant is to take.

¹⁵¹ Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

¹⁵² 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.

¹⁵³ Housekeeping.

¹⁵⁴ Housekeeping.

¹⁵⁵ Adds language to ensure that other sections are fulfilled as well.

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- (56) ~~Distribute~~ Circulate¹⁵⁶, or require the applicant to ~~distribute~~ circulate¹⁵⁷, concurrently with the filing in paragraph (4), the draft ~~environmental assessment EA~~ to other agencies having jurisdiction or expertise as well as citizen groups and individuals ~~which that~~ the approving agency reasonably believes to be affected;
- (67) Deposit or require the applicant to deposit, concurrently with the filing in paragraph (4), one paper¹⁵⁸ copy of the draft ~~environmental assessment EA~~ at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center¹⁵⁹;
- (78) Receive public comments, transmit copies of public comments to the applicant and require the applicant to respond to public comments, all in accordance with section 11-200-9.1 for draft ~~environmental assessment EA~~, or 11-200-15 for ~~preparation notices EISPNs~~ and their associated final ~~environmental assessment EA~~. For draft ~~environmental assessment EA~~, the approving agency shall require the applicant:
- (A)¹⁶⁰ to ~~provide~~ revise the draft EA with¹⁶¹ ~~whatever~~ information the approving agency deems necessary in accordance with section 11-200-10¹⁶² ~~to revise the draft environmental assessment to inform its determination for a FONSI or EISPN, taking into account comments on the draft EA~~¹⁶³;
- (B) to incorporate comments as appropriate; and,
- (C) to include copies of comment letters and the applicant responses. ~~(the The~~¹⁶⁴ ~~draft environmental assessment EA~~ as revised shall be filed as a final ~~environmental assessment EA~~ as described in section 11-200-11.2)¹⁶⁵; and
- (89) As appropriate, issue a ~~negative declaration FONSI~~ determination or an ~~environmental impact statement preparation notice EISPN~~ with appropriate notice of determination thereof pursuant to section 11-200-11.2 ~~within thirty days from the end of the thirty day public comment period~~ of receiving information

¹⁵⁶ Replaces the term “distribute” 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.

¹⁵⁷ Replaces the term “distribute” 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.

¹⁵⁸ 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.

¹⁵⁹ 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.

¹⁶⁰ Breaks up the paragraph so that the three requirements for the applicant are easier to read.

¹⁶¹ Housekeeping.

¹⁶² Emphasizes that the final EA content should still meet the EA content requirements as set for in section 10.

¹⁶³ 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.

¹⁶⁴ Changes the sentence from a parenthetical statement to a standalone sentence.

¹⁶⁵ Changes the sentence from a parenthetical statement to a standalone sentence.

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required for delivery to the approving agency pursuant to paragraph 8¹⁶⁶. For ~~preparation notice~~ EISPN determinations, the approving agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

- (c) For agency or applicant actions, the proposing agency or the approving agency, as appropriate, shall analyze or cause to be analyzed in the EA a reasonable range of¹⁶⁷ alternatives, in addition to the proposed action in the ~~environmental assessment~~ EA.
- (d) For agency or applicant actions, if the agency determines, through its judgment and experience, that an EIS is likely to be required, the agency may choose not to prepare an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and instead shall prepare an EIS that begins with an EISPN.¹⁶⁸

Commented [RT13]: "...or cause to have prepared..."

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

¹⁶⁶ Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.

¹⁶⁷ 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.

¹⁶⁸ 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.

§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated Negative Declaration Finding of No Significant Impact¹⁶⁹ Determinations & Addenda to Draft Environmental Assessments

- (a) This section shall apply only if a proposing agency or an approving agency anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that agency has completed the draft EA requirements of section 11-200-9(a), ~~paragraphs (1), (2), (3), (4), (5), (6) and (7) for agencies~~¹⁷⁰; or section 11-200-9(b), ~~paragraphs (1), (2), (3), (4), (5) and (6) for applicants~~¹⁷¹, 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 assessment EA was published in the periodic bulletin and shall continue for a period of thirty days. 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 days.~~¹⁷² Written comments to the proposing agency or approving agency, whichever is applicable, with a copy of the comments to the applicant, ~~if applicable,~~¹⁷³ ~~or proposing agency,~~¹⁷⁴ shall be received or postmarked to the proposing agency or approving agency, within the thirty-day period. Any comments outside of the thirty-day period need not be considered or responded to. However, for a proposed site for a new correctional facility or for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS, the thirty-day period shall be a sixty-day period.¹⁷⁵
- (c) For agency actions, the proposing agency shall respond in writing to all comments received or postmarked during the thirty-day review period, incorporate comments into

¹⁶⁹ Housekeeping.

¹⁷⁰ These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

¹⁷¹ These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

¹⁷² Measures time consistently in the process. Adds clarity to how to count days (distinguishes from working days) and that the publication date is counted as day zero.

¹⁷³ Clarifies that applicants are not always involved and when not involved, not copy of the comments need to be sent to the applicant.

¹⁷⁴ Redundant; the proposing agency is already as identified as receiving comments.

¹⁷⁵ Incorporates the public comment period and time limit from HRS § 353-16.35.

Commented [14]: This language could be broadened to just acknowledge that there are special cases that have different comment period lengths set by statute and in those cases that statute's requirement must be followed.

Commented [RT15R14]: Good idea, but since this is currently the only one, we should name it specifically.

Commented [16]: Revise to say something like "statutorily mandated"? That leaves it open for acknowledging other statute comment periods

Commented [RT17R16]: Sounds good.

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~~the final EA¹⁷⁶ as appropriate,¹⁷⁷ and append the comments and responses in to¹⁷⁸ the final environmental assessment EA. Each response shall be sent directly to the person commenting, with copies of the response also sent to the office. If a number of comments are identical or very similar, the proposing agency may group the comments and prepare a single standard response for each group. The comments must be attached to the final EA regardless of whether the agency believes the comments merit individual discussion in the body of the final EA.¹⁷⁹~~

- (d) For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and ~~the approving agency shall¹⁸⁰ incorporate or~~ comments into the final EA as appropriate, and¹⁸¹ append the comments and responses in to¹⁸² the final environmental assessment EA. If a number of comments are identical or very similar, the applicant may group the comments and prepare a single standard response for each group. The comments must be attached to the final EA regardless of whether the approving agency believes the comments merit individual discussion in the body of the final EA.¹⁸³ Each response shall be sent directly to the person commenting with a copy to the office.¹⁸⁴ A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.¹⁸⁵
- (e) An addendum document to a draft environmental assessment EA shall reference the original draft environmental assessment EA it attaches to and shall comply with all

Commented [RT18]: Typo, subs. and for a

Commented [RT19]: I think we need to add that in the case of multiple identical comments such as pre-printed postcards or letters with no original content by the sender, only one example of the item need be included. The document should include the stated names(if provided in a legible form) of all senders of such identical items.

¹⁷⁶ Clarifies that the comments are included in the final EA.

¹⁷⁷ Housekeeping.

¹⁷⁸ Housekeeping.

¹⁷⁹ 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.

¹⁸⁰ The applicant prepares the document so has the responsibility to incorporate the comments and responses into the document.

¹⁸¹ Clarifies that the comments are incorporated into the final EA.

¹⁸² Housekeeping.

¹⁸³ 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.

¹⁸⁴ Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

¹⁸⁵ Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

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applicable public review and comment requirements set forth in sections 11-200-3 and 11-200-9.

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

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§11-200-10 Contents of an Environmental Assessment

The proposing agency or approving agency shall prepare any draft or final ~~environmental assessment~~ EA of each proposed action and determine whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The ~~environmental assessment~~ EA shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~ preparing¹⁸⁶ the assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and summary analysis¹⁸⁷ of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) Agency determination or, for draft ~~environmental assessments~~ EAs only, an anticipated determination;
- (9) Findings and reasons supporting the agency determination or anticipated determination;
- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
- (11) List of all required¹⁸⁸ permits and approvals (State, federal, county) required and identification of which are considered to be discretionary¹⁸⁹, and
- (12) Written comments and responses to the comments ~~under~~ received pursuant to¹⁹⁰ the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods.

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

Commented [RT20]: For footnote 187, maybe say "a discussion detailed enough to support a conclusion"?

¹⁸⁶ Uses more accurate time consistent with language in the rules..

¹⁸⁷ 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 sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

¹⁸⁸ Housekeeping. Moves the word required from the end of the clause to before the word "permits".

¹⁸⁹ Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

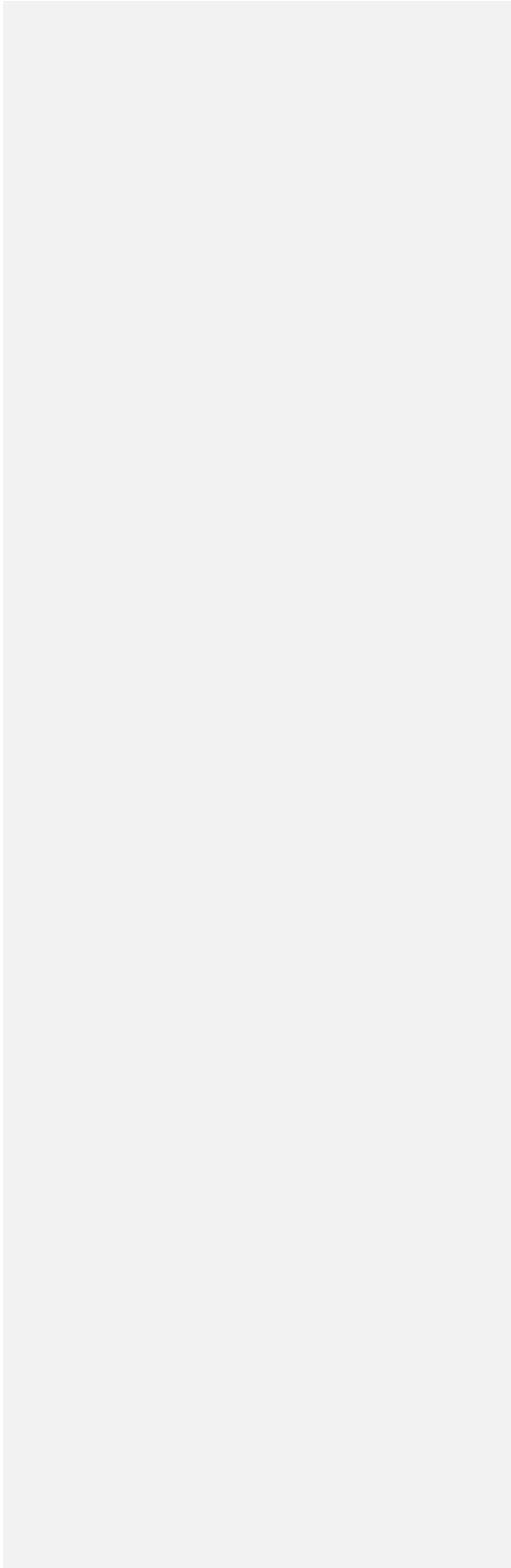
¹⁹⁰ Housekeeping.

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§11-200-11 REPEALED.

[R AUG 31 1996]



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

- (a) After:¹⁹¹
- (1) ~~preparing~~ Preparing, or causing to be prepared,¹⁹² ~~an environmental assessment a draft EA, and~~¹⁹³
 - (2) ~~reviewing~~ Reviewing any public and agency comments, if any, and¹⁹⁴
 - (3) ~~applying~~ Applying the significance criteria in section 11-200-12,
- if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, ~~it~~ the proposing agency or approving agency¹⁹⁵ shall issue a notice of determination ~~which that~~¹⁹⁶ shall be an anticipated ~~negative declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.
- (b)¹⁹⁷ The proposing agency or approving agency shall ~~also file such the~~¹⁹⁸ notice and supporting draft EA¹⁹⁹ with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9,²⁰⁰ and the requirements in subsection (ed)²⁰¹ ~~along with four copies of the supporting environmental assessment~~²⁰². ~~In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency. For applicant actions, the approving agency shall also send the anticipated FONSI to the applicant.~~²⁰³
- (bc) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date of receipt by the office in accordance with section 11-200-3.
- (ed) The notice of determination shall indicate in a concise manner:

¹⁹¹ Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to make the language clearer.

¹⁹² Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

¹⁹³ Housekeeping. Specifies draft EA.

¹⁹⁴ Housekeeping.

¹⁹⁵ Housekeeping.

¹⁹⁶ Housekeeping.

¹⁹⁷ Housekeeping. Renumbering of all subsequent paragraphs of this section.

¹⁹⁸ Housekeeping.

¹⁹⁹ Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

²⁰⁰ Housekeeping.

²⁰¹ Housekeeping.

²⁰² Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

²⁰³ 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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- (1) Identification of the²⁰⁴ applicant or proposing agency;
- (2) Identification of the approving agency or²⁰⁵ accepting authority;
- (3) ~~Brief~~ A brief²⁰⁶ description of the²⁰⁷ proposed action;
- (4) ~~Determination~~ The determination²⁰⁸;
- (5) Reasons supporting the²⁰⁹ determination; and
- (6) ~~Name~~ The name²¹⁰, title, contact information, including the email address, physical²¹¹ address, and phone number of contact person for further information.

- (de) When an agency withdraws a document, determination, or both²¹² pursuant to ~~its~~ the agency's²¹³ rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

Commented [RT21]: "and the rationale for the withdrawal"??

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

²⁰⁴ Housekeeping.

²⁰⁵ 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.

²⁰⁶ Housekeeping.

²⁰⁷ Housekeeping.

²⁰⁸ Housekeeping.

²⁰⁹ Housekeeping.

²¹⁰ Housekeeping.

²¹¹ Includes 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.

²¹² 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).

²¹³ 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.

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

- (a) After:²¹⁴
- (1) ~~preparing~~ Preparing, or causing to be prepared,²¹⁵ a final environmental assessment EA,
 - (2) ~~reviewing~~ Reviewing any public and agency comments, if any, and²¹⁶
 - (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~~ notice²¹⁷ of determination ~~for an EISPN or FONSI~~²¹⁸ 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,~~²¹⁹ 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.²²⁰
- (~~1b~~²²¹) ~~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~~²²².
- (~~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~~²²³ 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~~²²⁴.
- (d) The proposing agency or approving agency shall file the notice and the supporting final EA with the office as early as possible after the determination is made in accordance

²¹⁴ Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to make the language clearer.

²¹⁵ Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

²¹⁶ Housekeeping.

²¹⁷ Housekeeping.

²¹⁸ Clarifies which of two determinations is to be issued.

²¹⁹ Removes unnecessary language on final EA filing requirements

²²⁰ This requirement is now addressed in the new proposed paragraph D.

²²¹ Housekeeping. Renumbering of all subsequent paragraphs of this section.

²²² Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

²²³ Housekeeping.

²²⁴ Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

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with section 11-200-9, addressing the requirements in subsection (f).²²⁵ For applicant actions, the approving agency shall send the notice of determination for an EISPN or FONSI to the applicant.²²⁶

- (be) The office shall publish the appropriate notice of determination in the periodic bulletin following receipt of the documents in subsection (a) by the office in accordance with section 11-200-3.
- (ef) The notice of determination for a FONSI²²⁷ shall indicate in a concise manner:
- (1) Identification of the²²⁸ applicant or proposing agency;
 - (2) Identification of the approving agency or²²⁹ accepting authority;
 - (3) Brief A brief²³⁰ description of the²³¹ proposed action;
 - (4) Determination The determination²³²,
 - (5) Reasons supporting the²³³ determination; and
 - (6) Name The name²³⁴, title, contact information, including the email address, physical²³⁵ address, and phone number of contact person for further information.
- The notice of determination for an EISPN shall be prepared pursuant to section 11-200-15.²³⁶
- (dg) When an agency withdraws a document, determination, or both²³⁷ pursuant to ~~its~~ the agency's²³⁸ rules, the agency shall submit to the office a written letter informing the office

²²⁵ 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.

²²⁶ 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).

²²⁷ Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.

²²⁸ Housekeeping.

²²⁹ 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.

²³⁰ Housekeeping.

²³¹ Housekeeping.

²³² Housekeeping.

²³³ Housekeeping.

²³⁴ Housekeeping.

²³⁵ Includes 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.

²³⁶ 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.

²³⁷ 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).

²³⁸ 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.

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of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

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

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§11-200-12 Significance Criteria

- (a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment;²³⁹ 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 secondary, and the cumulative as well as the short-term and long-term effects of the action. In most instances, an action shall be determined to have a significant effect on the environment if it:
- (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or cultural resource~~ Irrevocably commits a natural resource²⁴⁰;
 - (2) Curtails the range of beneficial uses of the environment;
 - (3) Conflicts with the state's ~~long-term~~ long-term environmental policies or long-term environmental²⁴¹ goals and guidelines as expressed in chapter 344, HRS, or other laws,²⁴² and any revisions thereof and amendments thereto, court decisions, or executive orders;
 - (4) Substantially Adversely²⁴³ affects the economic welfare, ~~or social welfare, or cultural practices~~²⁴⁴ of the community or State;
 - (5) Substantially affects public health;
 - (6) Involves substantial secondary impacts, such as population changes or effects on public facilities;
 - (7) Involves a substantial degradation of environmental quality;
 - (8) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
 - (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
 - (10) Detrimentally affects air or water quality or ambient noise levels;
 - (11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
 - (12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or,

Commented [RT22]: That definition, however ingrained in the statute, is problematic. This is probably why the section in the Rules was written this way. Whereas the Oxford online dictionary defines adverse as "preventing success or development; harmful; unfavorable", i.e., implying significance, Webster-Merriam includes among its definitions "opposed to one's interests". So if you have \$100 in your wallet and I take a dollar out, it can certainly be argued that it is an adverse impact. In EIA practice, this is often how it is used. You can have negligible, minor or significant adverse impacts. In fact, it is used in that sense in both the existing and proposed revised Rules. But with this change, an adverse economic, social or cultural practice impact will be by definition significant. If fact, IF WE ADOPT THIS, WE NEED TO DEFINE ADVERSE IN THE OXFORD WAY.

²³⁹ Housekeeping.

²⁴⁰ Revises language to match the definition of "significance" in Section 343-2, HRS.

²⁴¹ Revises language to match the definition of "significance" in Section 343-2, HRS.

²⁴² 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.

²⁴³ 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.

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

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(13) Requires substantial energy consumption.

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

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

- (a) Chapter 343, HRS, provides that whenever 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, and previously accepted ~~statements~~ EIS.
- (b) Previous determinations and previously accepted ~~statements~~ EISs may be incorporated by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.
- (c) Agencies shall not, without considerable pre-examination and comparison, use past determinations and previous ~~statement~~ EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted ~~statements~~ EISs. Further, when previous determinations and previous ~~statements~~ EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered.

[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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Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

§11-200-14 General Provisions

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

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

An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that ~~statements~~ EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision making²⁴⁷.

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

²⁴⁵ Housekeeping. Breaks the paragraph up and helps to see the minimum elements of the EIS process.

Renumbers paragraphs based on addition of public scoping meeting.

²⁴⁶ Requires at least one public scoping meeting for an EIS.

²⁴⁷ Emphasizes that the EIS process is to occur before committing to a particular course of action.

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

- (a)²⁴⁸ 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;
 - (4) Reasons supporting the determination;
 - (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 contact person for further information.²⁴⁹
- (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~~²⁵⁰ 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 draft²⁵¹ EIS prior to the time the 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~~²⁵² be held within the thirty-day public review and comment period in subsection (bc), ~~provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d)~~²⁵³.
- (bc) 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 date in which to request to become a consulted party and to make written comments regarding

²⁴⁸ Creates a new paragraph and renumbers subsequent paragraphs.

²⁴⁹ Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

²⁵⁰ Housekeeping.

²⁵¹ Clarifies that the document is a draft EIS.

²⁵² Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

²⁵³ 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 of oral comments.

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the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty days.

- (ed) 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~~²⁵⁴ 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.
- (de) Any substantive written²⁵⁵ 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 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~~²⁵⁶ final statement draft EIS²⁵⁷.

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

²⁵⁴ Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.

²⁵⁵ Adds written as a requirement for being responded to and reproduced in the draft EIS.

²⁵⁶ Removes final EA requirement because a final EA may not have been prepared.

²⁵⁷ Replaces final EIS with draft EI, mirroring the previous sentence.

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§11-200-16 Content Requirements

For draft and final EISs, ~~The environmental impact statement~~ the document²⁵⁸ shall contain an explanation of the environmental consequences of the proposed action, pursuant to section 11-200-17²⁵⁹. The contents shall fully declare the environmental implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably foreseeable²⁶⁰ consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, ~~a statement~~ an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

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

²⁵⁸ Clarifies that Section 16 applies to both draft and final EISs.

²⁵⁹ Explicitly connects HAR §11-200-16 and §11-200-17.

²⁶⁰ Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history, and federal guidance to provide clarity on the desired standard.

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

- (a) The draft EIS, at a minimum, shall contain the information required in this section.
- (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the following:
- (1) Brief description of the action;
 - (2) Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);
 - (3) Proposed mitigation measures;
 - (4) Alternatives considered;
 - (5) Unresolved issues; ~~and~~
 - (6) Compatibility with land use plans and policies, and listing of permits or approvals; ~~and~~²⁶¹
 - (7) A list of relevant documents, including EAs and EISs, used to identify potential segmentation or cumulative impacts.²⁶²
- (c) The draft EIS shall contain a table of contents.
- (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~ the²⁶³ purpose and need for the proposed action.
- (e) The draft EIS shall contain a project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:
- (1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a related regional map;
 - (2) ~~Statement of objectives~~ Objectives of the proposed action²⁶⁴;
 - (3) General description of the action's technical, economic, social, cultural,²⁶⁵ and environmental characteristics;
 - (4) Use of public funds or lands for the action;

²⁶¹ Housekeeping.

²⁶² 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.

²⁶³ "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.

²⁶⁴ "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.

²⁶⁵ Adds cultural to the characteristics, in line with Act 50 (2000).

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- (5) Phasing and timing of action;
- (6) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and
- (7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section reasonable²⁶⁶ alternatives ~~which that~~ could attain the objectives of the action, ~~regardless of cost, in sufficient detail to explain why they were rejected~~ and for alternatives that were eliminated from detailed study, briefly discuss the reasons for eliminating them²⁶⁷. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:

- (1) The alternative of no action;
- (2) Alternatives requiring actions of a significantly different nature ~~which that~~ would provide similar benefits with different environmental impacts;
- (3) Alternatives related to different designs or details of the proposed actions ~~which that~~ would present different environmental impacts;
- (4) The alternative of postponing action pending further study; and,
- (5) Alternative locations for the proposed project.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, cultural,²⁶⁸ archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area, ~~and~~ any population and growth assumptions

²⁶⁶ 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.

²⁶⁷ 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.

²⁶⁸ Adds cultural, in line with Act 50 (2000).

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used to justify the action, and ~~determine any~~²⁶⁹ secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted in the draft EIS²⁷⁰.

- (h) The draft EIS shall include a ~~statement~~ description²⁷¹ of the relationship of the proposed action to land use and resource²⁷² plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use and resource²⁷³ plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the ~~statement~~ draft EIS²⁷⁴ shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

- (i) The draft EIS shall include ~~a statement~~ an analysis²⁷⁵ of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment, including direct and indirect effects ~~shall be included~~²⁷⁶. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. ~~It should be realized~~ The draft EIS should recognize²⁷⁷ that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation shall be²⁷⁸ made of the effects of any possible change in population patterns or growth

²⁶⁹ Housekeeping.

²⁷⁰ Housekeeping.

²⁷¹ Removes the word statement, which is a technical word in chapter 343, HRS, that refers to an EIS. Uses "description" similar to other paragraphs.

²⁷² Includes natural resource plans such as water management plans.

²⁷³ Includes natural resource plans such as water management plans.

²⁷⁴ Clarifies that this applies to draft EISs.

²⁷⁵ 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.

²⁷⁶ Housekeeping.

²⁷⁷ Housekeeping.

²⁷⁸ Housekeeping.

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upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data regarding these impacts²⁷⁹ shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

- (j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.
- (k) The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. ~~Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.~~ "Resources" shall be construed to also mean the natural and cultural resources irreversibly and irretrievably committed to the action and not only to the labor and materials committed to the action.²⁸⁰
- (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy ~~such as that including~~ those²⁸¹ found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, HRS, ~~shall be included, including and~~²⁸² those effects discussed in other ~~actions~~ subsections of this paragraph section²⁸³ ~~which that~~ are adverse and unavoidable under the proposed action. Also, the rationale for proceeding

²⁷⁹ Clarifies what the data should be about.

²⁸⁰ Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

²⁸¹ Housekeeping.

²⁸² Housekeeping.

²⁸³ Removes

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with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The ~~statement~~ EIS shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

- (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce ~~impact~~ impacts²⁸⁴, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. ~~Included~~ The draft EIS shall include, where possible and appropriate²⁸⁵, ~~should be~~²⁸⁶ specific reference to the timing of each step proposed to be taken in ~~the~~ any²⁸⁷ mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.
- (n) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problems.
- (o) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed.
- (p) The draft EIS shall include a separate and distinct section that contains reproductions of all ~~substantive written~~ comments and responses made during the ~~consultation process~~ thirty-day consultation period pursuant to section 11-200-15, responses to those comments, and a summary of any EIS public scoping meetings.²⁸⁸ A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS.

²⁸⁴ Housekeeping.

²⁸⁵ Removes redundant language.

²⁸⁶ Housekeeping.

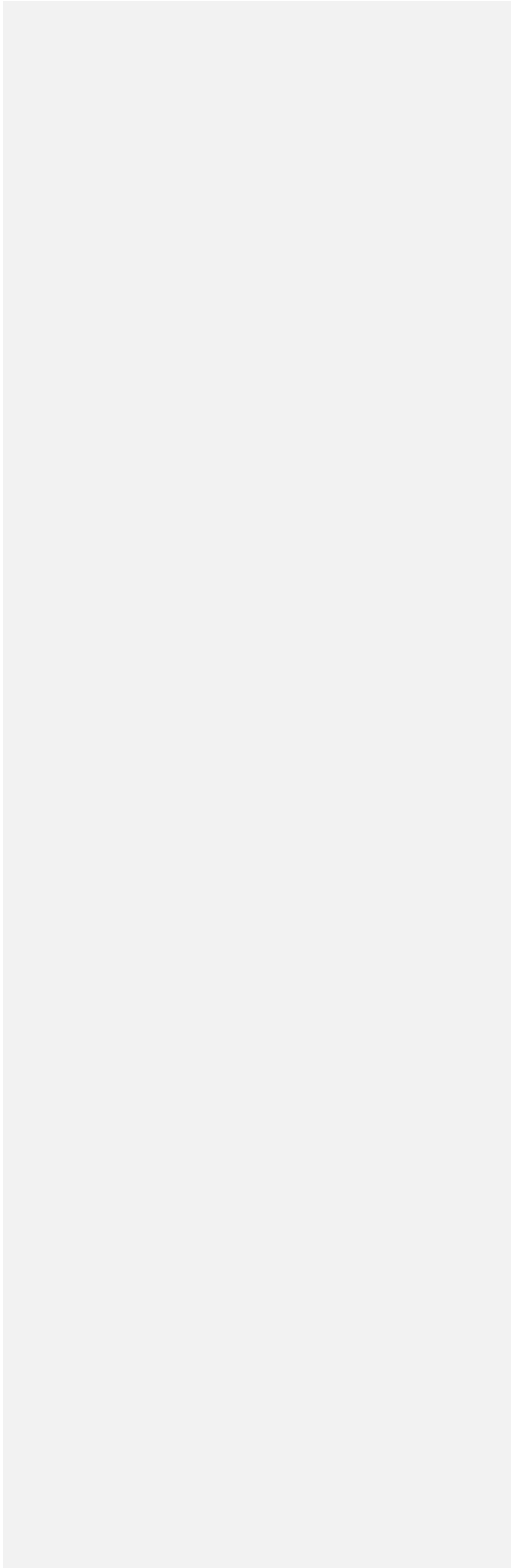
²⁸⁷ Changes reference to any mitigation measure process that may result from the analysis.

²⁸⁸ Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).

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[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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§11-200-18 Content Requirements; Final Environmental Impact Statement

The final EIS shall consist of:

- (1) The draft EIS ~~prepared in compliance with section 11-200-17, as~~²⁸⁹ revised to incorporate ~~substantive~~²⁹⁰ comments received during the consultation and review processes;
- (2) Reproductions of all ~~letters written comments~~ received ~~containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held during the consultation and review processes~~²⁹¹;
- (3) A list of persons, organizations, and public agencies commenting on the draft EIS;
- (4) The responses of the applicant or proposing agency to ~~each substantive question, comment, or recommendation~~ written comments²⁹² received in the review and consultation processes; ~~and~~²⁹³
- (5) The text of the final EIS ~~which shall be~~²⁹⁴ written in a format ~~which that~~ allows the reader to easily distinguish changes made to the text of the draft EIS.

Commented [RT23]: Do we need to rehash the response requirements for comment letters on the EIS, as we do for EAs in §11-200-9.1, or at least refer to it? I see the footnote, but.....

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

²⁸⁹ Connects this section with the previous section content requirements.

²⁹⁰ 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.

²⁹¹ Aligns language with the EISPN and draft EIS requirements.

²⁹² 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.

²⁹³ Housekeeping.

²⁹⁴ Housekeeping.

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§11-200-19 Environmental Impact Statement Style

In developing the draft and final²⁹⁵ EIS, preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail²⁹⁶ 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 shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. ~~Statements~~ EISs 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. Care shall be taken to concentrate on important issues and to ensure that the statement 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)

²⁹⁵ Clarifies this section applies to draft and final EISs.

²⁹⁶ Removes detail because detail is already discussed as being commensurate with the potential for impact.

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§11-200-20 Filing of an Environmental Impact Statement

- (a) The proposing agency or applicant shall file the original (signed)²⁹⁷ draft EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority²⁹⁸. Simultaneously, a minimum number of four copies of²⁹⁹ the draft EIS shall be filed with the office.~~
- (b) The proposing agency or applicant shall file the original (signed) final EIS with the accepting authority, ~~along with a minimum number of copies determined by the accepting authority³⁰⁰. Simultaneously, four copies of³⁰¹ 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 11-200-3.³⁰²~~
- (d)³⁰³ The proposing agency or applicant shall sign and date the original copy of 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.

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

²⁹⁷ Removes "original, signed" as it does not make sense for digital documents.

²⁹⁸ Removes minimum number of copies requirement as it does not make sense for digital documents.

²⁹⁹ OEQC only needs one copy, not four.

³⁰⁰ Removes minimum number of copies requirement as it does not make sense for digital documents.

³⁰¹ OEQC only needs one copy, not four.

³⁰² Removes the paragraph because the language is unnecessary.

³⁰³ Renumbers the paragraph.

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§11-200-21 Distribution

The office shall be responsible for the publication of the notice of availability of the EIS in its bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) ~~and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, and to the extent possible, the~~ The³⁰⁴ proposing agency or applicant shall make copies of the EIS ~~available~~ to individuals requesting the EIS. The office's distribution list may be developed cooperatively among the applicant or proposing agency, the accepting authority, and the office; provided ~~that~~³⁰⁵ the office shall be responsible for determining the final list. The applicant or proposing agency shall directly distribute the required copies to those on the distribution list after the office has verified to the applicant or proposing agency the accuracy of the distribution list. ~~For final statements, the agency or applicant shall give the commenter an option of requesting a copy of the final EIS or portions thereof.~~³⁰⁶

Commented [RT24]: How about "...make the EIS available...." there is similar language change above....

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

³⁰⁴ Removes outdated depositories requirement as all documents and determinations are available online to anyone.

³⁰⁵ Housekeeping.

³⁰⁶ 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.

§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 Addenda³⁰⁷

- (a) Public review shall not substitute for early and open discussion with interested persons and agencies,³⁰⁸ concerning the environmental impacts of a proposed action. Review of the draft³⁰⁹ 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 that³¹⁰ notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the applicant or proposing agency, shall be received or postmarked to the approving agency or accepting authority, within ~~said the~~³¹¹ forty-five-day comment³¹² period. Any comments outside of the forty-five day comment period need not be considered or responded to.
- (c) The proposing agency or applicant shall respond ~~in writing~~³¹³ to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. 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 EIS³¹⁴.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS shall indicate verbatim changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised

³⁰⁷ Rephrases title so that it is clearer that the whole section is about draft EISs.

³⁰⁸ Housekeeping.

³⁰⁹ Clarifies that the document is a draft EIS.

³¹⁰ Housekeeping.

³¹¹ Housekeeping.

³¹² Clarifies that the forty-five days is for the comment period.

³¹³ Removes phrase because the response must be in the final EIS, which is written.

³¹⁴ Focus on how the comment is addressed in the final EIS rather than just action.

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when the applicant's or proposing agency's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. If a number of 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 comments must be attached to the final EIS regardless of whether the agency or applicant believes they merit individual discussion in the body of the final EIS.³¹⁵

- (d) An addendum ~~document~~³¹⁶ to a draft ~~environmental impact statement~~ EIS shall reference the original draft ~~environmental impact statement~~ EIS to which³¹⁷ it attaches ~~to~~³¹⁸ and comply with all applicable filing, public review, and comment requirements set forth in subchapter 7, beginning with section 11-200-14³¹⁹.

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

³¹⁵ 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 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.

³¹⁶ Removes the word document as it is unnecessary.

³¹⁷ Housekeeping.

³¹⁸ Housekeeping.

³¹⁹ Clarifies that an addendum must begin with the general provisions and consultation prior to filing a draft EIS (i.e., and EISPN).

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§11-200-23 Acceptability

- (a) Acceptability of ~~a statement~~ a final EIS³²⁰ shall be evaluated on the basis of whether the ~~statement final EIS~~³²¹, in its completed form, represents an informational instrument which fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,³²² and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.
- (b) A ~~statement final EIS~~³²³ 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~~,³²⁴ 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 appropriately³²⁵ incorporated ~~in into the statement final EIS~~³²⁶, and comments and responses have been appended to the final EIS³²⁷.
- (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's³²⁸ 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's³²⁹ authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or nonacceptability of the proposing agency's statement. In the event that the action involves ~~both~~ state and county lands ~~or~~, funds, or both lands and funds,³³⁰ the governor or ~~an~~ the governor's³³¹ authorized representative shall have final authority to accept the EIS.

³²⁰ Clarifies that the document is a final EIS.

³²¹ Clarifies that the document is a final EIS.

³²² Clarifies that the EIS must meet all applicable elements of environmental review.

³²³ Clarifies that the document is a final EIS.

³²⁴ 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.

³²⁵ Recognizes that not all comments are incorporated into an EIS.

³²⁶ Clarifies that the document is a final EIS.

³²⁷ Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.

³²⁸ Housekeeping.

³²⁹ Housekeeping.

³³⁰ Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds.

³³¹ Housekeeping.

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- (d)³³² Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with section 11-200-3. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.
- (de) For actions proposed by applicants requiring approval from an agency, the applicant or accepting authority, which is the approving agency,³³³ may request the office to make a recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If the office decides to make a recommendation, it shall submit the recommendation to the applicant and the approving agency within the thirty-day period requiring an approving agency to determine the acceptability of the final EIS ~~and as~~³³⁴ described in section 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the agency shall notify the applicant of its determination, and provide specific findings and reasons. The agency shall also provide a copy of this determination to the office for publication ~~of a notice~~³³⁵ in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's statement. The agency shall notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS submission to the agency,^{336, 337} provided that the thirty-day period may, at the request of the applicant, be extended ~~at the request of the applicant~~³³⁸ for a period not to exceed fifteen days. The request shall be made to the accepting authority in writing. Upon receipt of an applicant's written³³⁹ request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be allowed merely for the convenience of the accepting authority. In the event that the agency fails to make a determination of acceptance or non-acceptance for the statement within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

³³² Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

³³³ Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

³³⁴ Housekeeping.

³³⁵ Housekeeping.

³³⁶ 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.

³³⁷ Housekeeping.

³³⁸ Housekeeping.

³³⁹ Connects to the previous sentence at the request shall be made in writing.

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- (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS ~~document~~³⁴⁰ which shall fully address the inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised draft EIS and the subsequent revised final EIS³⁴¹ shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.
- (fg) A proposing agency or applicant may withdraw an EIS by simultaneously³⁴² sending a ~~letter~~ written notification³⁴³ to the office and to the accepting authority³⁴⁴ informing the office of the proposing³⁴⁵ agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a ~~new~~ draft³⁴⁶ EIS.

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

³⁴⁰ Housekeeping.

³⁴¹ Added revised final EIS as the next step following a revised draft EIS.

³⁴² Requires the office and accepting authority to be notified of the withdrawal at the same time.

³⁴³ Removes the requirement for a letter and simply requires written notification, such as by email.

³⁴⁴ Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

³⁴⁵ Clarifies that the agency withdrawing the proposal is the proposing agency.

³⁴⁶ Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

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Subchapter 8 Appeals

§11-200-24 Appeals to the Council

An applicant, within sixty days after a³⁴⁷ non-acceptance determination by the approving agency under section 11-200-23³⁴⁸ of a statement a final EIS³⁴⁹ by an agency³⁵⁰, may to choose to³⁵¹ appeal the non-acceptance to the council, which within ~~thirty~~ ^{thirty six}³⁵² days of receipt of the appeal, shall notify the applicant of its determination to affirm the approving agency's non-acceptance or to reverse it³⁵³. The council chairperson shall include the appeal on the agenda of the council meeting immediately following the chairperson's receipt of the appeal. The council shall be deemed to have received the appeal on the date of the meeting for which the appeal is agendized.³⁵⁴ In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the council's decision. Pursuing an appeal by council does not abrogate an applicant's option under section 343-7(c), HRS, to bring judicial action.³⁵⁵

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

³⁴⁷ Housekeeping.

³⁴⁸ Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

³⁴⁹ Clarifies that the document is a final EIS.

³⁵⁰ Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

³⁵¹ "Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.

³⁵² 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.

³⁵³ Clarifies the Council's determination.

³⁵⁴ Connects receipt of the notice to appeal with the timing of the next EC meeting.

³⁵⁵ 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 council is unable to obtain quorum after an applicant appeals to the council.

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Subchapter 9 National Environmental Policy Act

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

When ~~the situation occurs where~~³⁵⁶ 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. §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~~ NEPA³⁵⁷, 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.~~³⁵⁸
- (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.³⁵⁹
- (3) Where a federal agency issues a FONSI and concludes that a statement is not required under the NEPA, the 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.³⁶⁰
- (24) ~~The National Environmental Policy Act~~ NEPA³⁶¹ requires that ~~draft~~³⁶² ~~statements~~ EISs³⁶³ 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 may be submitted to

³⁵⁶ Housekeeping.

³⁵⁷ Housekeeping.

³⁵⁸ Housekeeping.

³⁵⁹ States that federal categorical exemptions do not automatically result in HEPA exemptions. 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.

³⁶⁰ 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.

³⁶¹ Housekeeping.

³⁶² Language is applicable to draft and final.

³⁶³ Housekeeping.

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comply with this chapter,³⁶⁴ 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. 1857.³⁶⁵ The responsible federal agency's supplemental EIS requirements shall apply in the cases in place of this chapter's supplemental EIS requirements.³⁶⁶

Commented [RT25]: I am unclear as the rationale for this.

- (5)³⁶⁷ 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~~ NEPA³⁶⁸. The office and 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.
- (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, 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~~ or³⁶⁹ responsible federal agency.

³⁶⁴ Based on Massachusetts' 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.

³⁶⁵ Adds a clause from Washington WAC to ensure that the federally-prepared statement meets federal standards for quality.

³⁶⁶ 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.

³⁶⁷ 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.

³⁶⁸ Housekeeping.

³⁶⁹ 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.

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- (47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section³⁷⁰ 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)

³⁷⁰ Changes language to “this section” instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.

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Proposed New Subchapter X Programmatic EISs

Proposed §11-200-XX Programmatic Environmental Impact Statements³⁷¹

- (a) Proposing agencies may prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.
- (b) Approving agencies may allow applicants to prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the PEIS may require no or limited further review.
- (c) Upon acceptance of a final programmatic EIS:
- (1) If a PEIS evaluates project-level issues such as precise project footprints or specific design details, no further compliance with this chapter is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the PEIS.
- (2) Further chapter 343, HRS, environmental review must be prepared if a subsequent proposed action was not addressed in the PEIS or the subsequent proposed action exceeds the thresholds evaluated in the PEIS, and the subsequent action may have a significant impact on the environmental. Further review may be in the form of an EIS, EA, or exemption, for specific components of the proposal.

Commented [26]: Can there be a supplemental programmatic EIS? (SPEIS?)

Commented [RT27R26]: Should we just say (or presume) that in all other respects, a PEIS is exactly the same as an EIS?

³⁷¹ Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus further, project-level review is warranted.

Proposed §11-200-XX Content Requirements; Draft Programmatic Environmental Impact Statement³⁷²

(a) The content requirements for a PEIS shall be the same as those for an EIS set forth in subchapter 7, with the understanding that the level of detail in a PEIS may be less than that of a project EIS. The level of detail in a PEIS must be sufficient to allow informed choice among planning-level alternatives and to develop broad mitigation strategies. A PEIS should examine the interaction among proposed projects or plan elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also includes an examination of alternatives.

(b) The PEIS may be broader and more general than a project EIS and omit evaluating project-level issues that are not yet ready for decision at the planning level, or it may evaluate project-level issues such as precise project footprints or specific design details.

(c) A PEIS should discuss the logic and rationale for the choices advanced. It may also include an assessment of specific impacts if such details are available and specific mitigation measures. It may be based on conceptual information in some cases. It may discuss in general terms the constraints and sequences of any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

³⁷² 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.

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Subchapter 10 Supplemental Statements

§11-200-26 Supplemental EIS³⁷³ 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; or³⁷⁴~~
 - (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.³⁷⁵~~
- (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.³⁷⁶~~
- (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.

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

³⁷³ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

³⁷⁴ Reproduces the language from the definition and above paragraph, pairing it with item 2.

³⁷⁵ Adds a change in knowledge as a potential reason to require a supplemental EIS.

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

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§11-200-27 Supplemental EIS³⁷⁷ 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 has not substantially commenced, the accepting authority or approving agency shall formally re-evaluate the need for a supplemental statement and make a determination of whether a supplemental statement is required. A written summary of this evaluation and the³⁷⁸ ~~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 ~~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 not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

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

³⁷⁷ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

³⁷⁸ 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 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.

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§11-200-28 Supplemental EIS³⁷⁹ Contents

The contents of the supplemental ~~statement~~ EIS shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as they relate to the changes.

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

³⁷⁹ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

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§11-200-29 Supplemental EIS³⁸⁰ Procedures

The requirements of the thirty-day consultation, filing public notice, distribution, the forty-five-day public review, comments and response, and acceptance procedures, shall be the same for the supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.

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

³⁸⁰ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

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Subchapter 11 Severability

§11-200-30 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable.

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

Note

Historical Note: Chapter 11-200, HAR, is based substantially on the Environmental Impact Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85] Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995, November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii Tribune-Herald and Molokai Dispatch on October 12, 1995.

Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It has not been compiled.

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1 "Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests
2 approval from an agency for a proposed action.

3 "Approval" means a discretionary consent required from an agency prior to actual¹¹
4 implementation of an action. Discretionary consent means a consent, sanction, or
5 recommendation from an agency for which judgment and free will may be exercised by the
6 issuing agency, as distinguished from a ministerial consent. Ministerial consent means a
7 consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed
8 by law or rule without the use of judgment or discretion.¹²

9 "Approving agency" means an agency that issues an approval prior to actual¹³ implementation
10 of an applicant¹⁴ action, determines the need for an EA or EIS, and issues the exemption,
11 FONSI, or acceptance determination.¹⁵ The approving agency may be an accepting authority for
12 an applicant final EIS.¹⁶

13 "Concurrence" means the discretionary consent of the council to an agency exemption list.¹⁷

14 "Council" or "EC" means the environmental council.

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

20 Discretionary consent means a consent, sanction, or recommendation from an agency for which
21 judgment and free will may be exercised by the issuing agency, as distinguished from a
22 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an

Definition of these two terms not that clear. For example, traffic control plans require approval based on judgement and discretion, but does not mean an EA IS required.

23 ¹¹ Does not add meaning to sentence so removing the word.

24 ¹² Removed "discretionary consent" from the definition and made it a standalone definition that mirrors the
25 statute.

26 ¹³ Does not add meaning to sentence so removing the word.

27 ¹⁴ Approving agencies are only in the case of applicants.

28 ¹⁵ The approving agency makes the decision about level of review and if the applicant has satisfied HRS
29 Chapter 343.

30 ¹⁶ In the case of applicants, the approving agency is also the accepting authority. This adds clarification to
31 the definition.

32 ¹⁷ Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary
33 because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is
34 not an approval because it does not apply to a specific project.

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1 2. An expansion in generating capacity of an existing, fossil-fueled,
2 electricity-generating facility, where the incremental electrical output rating of the
3 new equipment exceeds 5.0 megawatts.³⁵

4 "Preparation notice," or "EIS preparation notice,"³⁶ or "EISPN"³⁷ means a determination based
5 ~~on an environmental assessment that the subject that an~~³⁸ action may have a significant effect
6 on the environment and, therefore, will require the preparation of an ~~environmental impact~~
7 ~~statement~~ EIS, based on either an EA or an agency's judgment and experience that the
8 proposed action may have a significant effect on the environment and therefore authorizes the
9 preparation of an EIS without first requiring an EA.³⁹

10 "Primary impact," or "primary effect," or "direct impact,"⁴⁰ or "direct effect" means effects which
11 that are caused by the action and occur at the same time and place.

12 A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a
13 number of separate actions in a given geographic area which, if considered singly, may have
14 minor impacts, but if considered together may have significant impacts; (2) a sequence of
15 actions contemplated by a single agency or applicant; (3) separate actions having generic or
16 common impacts; (4) an entire program or plan having wide application or restricting the range
17 of future alternative policies or projects, including new or significant changes to existing land use
18 plans, development plans, zoning regulations, or agency comprehensive resource management
19 plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)
20 implementation of a single project or program over a large geographic area.⁴¹

21 "Proposing agency" means any state or county agency that proposes an action under chapter
22 343, HRS.⁴²

23 "Secondary impact," or "secondary effect," or "indirect impact,"⁴³ or "indirect effect" means
24 effects which that are caused by the action and are later in time or farther removed in distance,
25 but are still reasonably foreseeable. Indirect effects may include growth inducing effects and

26 ³⁵ Adds definition from HRS § 343-2.

27 ³⁶ Housekeeping.

28 ³⁷ Adds common abbreviation for use throughout the rules.

29 ³⁸ Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS
30 language.

31 ³⁹ Adds the direct-to-EIS pathway to the definition of an EISPN.

32 ⁴⁰ Housekeeping.

33 ⁴¹ Adds a definition to go along with new sections on how to do environmental review for an action ~~this~~ is
34 a "program". Most environmental review focuses on projects. By providing language on a programmatic
35 ~~look~~, the rules give direction on how to address projects or programs at risk of being viewed as
36 segmented and acknowledges the tension between earliest practicable time with project specificity.

37 ⁴² Added definition because the term is used frequently throughout the rules.

38 ⁴³ Housekeeping.

environmental review?

*Is this the right word?
How about "tradeoff"?*

that

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1 other effects related to induced changes in the pattern of land use, population density or growth
2 rate, and related effects on air, ~~and~~ water,⁴⁴ and other natural systems, including ecosystems.

3 "Significant effect" or "significant impact" means the sum of effects on the quality of the
4 environment, including actions that irrevocably commit a natural resource, curtail the range of
5 beneficial uses of the environment, are contrary to the ~~state's~~ State's⁴⁵ environmental policies or
6 long-term environmental goals and guidelines as established by law, ~~or~~⁴⁶ adversely affect the
7 economic or social welfare, ~~cultural practices of the community and State,~~⁴⁷ or are otherwise set
8 forth in section 11-200-12 ~~of this chapter~~⁴⁸.

adversely affect

9 "Substantial commencement" means that a project or program has reached the stage where its
10 last approval has been granted, or, for government programs for which an approval is not
11 required, the project or program has advanced to the point where financial commitments are in
12 place and scheduled and design is essentially complete.⁴⁹

13 "Supplemental statement EIS" means an additional environmental impact statement updated
14 EIS⁵⁰ prepared for an action for which ~~a statement an EIS~~ was previously accepted, but which
15 has yet to progress to substantial commencement and since acceptance the action,
16 circumstances, or anticipated impacts have⁵¹ changed substantively in size, scope, intensity,
17 use, location, or timing, among other things.

18 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.⁵²

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

Not sure why we have this phrase only for this item.

20 ⁴⁴ Housekeeping.

21 ⁴⁵ Housekeeping.

22 ⁴⁶ Housekeeping.

23 ⁴⁷ Updates language to match Act 50 (2000) on cultural practices.

24 ⁴⁸ Housekeeping.

25 ⁴⁹ Definition is proposed to help clarify when an action has progressed sufficiently to no longer require
26 examination for supplemental environmental review. This language draws on other statutes.

27 ⁵⁰ Housekeeping.

28 ⁵¹ Incorporates substantial commencement into the definition and emphasizes that changes can apply to
29 the proposed action, the environment, or knowledge (ties to supplemental sections).

30 ⁵² Adds definition from HRS § 343-2.

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1 Subchapter 3 Periodic Bulletin

§11-200-3 Periodic Bulletin

- 2 (a) The office shall inform the public through the publication of a periodic bulletin of the
3 following:
- 4 (1) Notices filed by agencies of the availability of ~~environmental assessments~~ EAs
5 and appropriate addendum documents for review and comments;
 - 6 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or
7 not required;
 - 8 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and
9 appropriate addendum documents for review and comments;
 - 10 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
 - 11 (5) Other notices required by the rules of the council.

12 ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin~~
13 ~~shall also be sent to the state library system and other depositories or clearinghouses.⁵³~~

14 ~~(b)~~⁵⁴ The bulletin shall be issued on the eighth and twenty-third days of each month. All
15 agencies and applicants submitting draft ~~environmental assessments~~ EAs, ~~negative~~
16 ~~declarations~~ FONSIs, ~~preparation notices~~ EISPNS⁵⁵, ~~environmental impact statements~~
17 EISs, acceptance or nonacceptance determinations, addenda, supplemental ~~statements~~
18 EISs, supplemental ~~preparation notices~~ EISPNS, revised documents, withdrawals, and
19 other notices required to be published in the bulletin shall submit such documents or
20 notices to the office before the close of business ~~eight~~ four⁵⁶ ~~working business~~⁵⁷ days
21 prior to the issue date. In case the deadline falls on a state holiday or ~~nonworking~~
22 non-business⁵⁸ day, the deadline shall be the next working business⁵⁹ day.

23 ~~(c)~~ All submittals to the office for publication in the bulletin shall be accompanied by a
24 completed informational form ~~which~~ that provides whatever information the office needs
25 to properly notify the public. The information requested may include the following: the
26 title of the action; the islands affected by the proposed action; tax map key numbers;
27 street addresses; nearest geographical landmarks; latitudinal and longitudinal

28 ⁵³ This rule is no longer required as the periodic bulletin is available to everyone electronically and no
29 paper copies are produced by the office.

30 ⁵⁴ Housekeeping. Renumbers paragraphs.

31 ⁵⁵ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for
32 housekeeping purposes, unless otherwise noted.

33 ⁵⁶ OEQC does not need eight business days anymore to prepare the periodic bulletin.

34 ⁵⁷ Housekeeping.

35 ⁵⁸ Housekeeping.

36 ⁵⁹ Housekeeping.

(b) The bulletin shall be made available electronically. Notice of the publication of the bulletin shall be emailed to any person upon request.

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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).¹²⁶
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).¹²⁷

10 (eg) Each agency shall maintain records of such¹²⁸ actions, called exemption notices,¹²⁹
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.¹³⁰

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

*This is qualitative. Why not
Specify number of days?*

23 ¹²⁶ 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.

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

29 ¹²⁸ Housekeeping.

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

32 ¹³⁰ 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.

38 ¹³¹ States the name of the statute for emergency proclamations.

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

1 that the approving agency declares exempt pursuant to section 11-200-8, the approving
2 agency shall:

- 3 (1) Require the applicant, at the earliest practicable time, to seek the advice and
4 input of the lead county agency responsible for implementing the county's
5 general plan for each county in which the proposed action is to occur, and
6 consult with other agencies having jurisdiction or expertise as well as those
7 citizen groups and individuals ~~which~~ that the approving agency reasonably
8 believes to be affected;
- 9 (2) Require the applicant to ~~provide whatever information the approving agency
10 deems necessary to~~¹⁴⁸ complete the preparation of an ~~environmental assessment~~
11 EA in accordance with section 11-200-10;
- 12 (3) Within thirty days from the date of receipt of the applicant's complete request for
13 approval to the approving agency:
14 (A) ~~prepare an environmental assessment pursuant to section 11-200-10; and~~
15 (B) ~~determine, after reviewing the environmental assessment and considering~~
16 ~~the significance criteria in section 11-200-12 whether the proposed action~~
17 ~~warrants an anticipated negative declaration or an environmental impact~~
18 ~~statement preparation notice;~~
- 19 require the applicant¹⁴⁹ to prepare a draft EA pursuant to section 11-200-10¹⁵⁰
- 20 (4)¹⁵¹ Determine, after reviewing the draft EA and considering the significance criteria
21 in section 11-200-12, whether the proposed action warrants an anticipated
22 FONSI or an EISPN¹⁵²;
- 23 (45) File the appropriate notice of determination (anticipated ~~negative declaration~~
24 FONSI or ~~environmental impact statement preparation notice~~ EISPN in
25 accordance with section 11-200-11.1 or 11-200-11.2), the completed
26 informational form referenced¹⁵³ in section 11-200-3(d)¹⁵⁴ and ~~four copies of the~~
27 supporting ~~environmental assessment~~ EA (a draft ~~environmental assessment~~ EA
28 for the anticipated ~~negative declaration~~ FONSI or a final ~~environmental~~
29 ~~assessment~~ EA for the ~~environmental impact statement preparation notice~~

Confusing. Seems to be saying the same thing.

30 ¹⁴⁸ Narrows the language to focus on the EA on the content requirements.

31 ¹⁴⁹ Shifts the focus of preparation to the applicant per Act 172 (2012).

32 ¹⁵⁰ Removes the thirty-day requirement for an approving agency to prepare, review, and issue an
33 anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within 30 days of receipt of a
34 request for approval which course of environmental review the applicant is to take.

35 ¹⁵¹ Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is
36 appropriate. Subsequent paragraphs are renumbered.

37 ¹⁵² Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage
38 and filing an anticipated FONSI.

39 ¹⁵³ Housekeeping.

40 ¹⁵⁴ Housekeeping.

Not consistent?

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- 1 EISPN) with the office in accordance with sections 11-200-3, and 11-200-11.1, or
2 11-200-11.2, and other applicable sections of this chapter¹⁵⁵;
- 3 (56) ~~Distribute~~ Circulate¹⁵⁶, or require the applicant to ~~distribute~~ circulate¹⁵⁷,
4 concurrently with the filing in paragraph (4), the draft ~~environmental assessment~~
5 EA to other agencies having jurisdiction or expertise as well as citizen groups
6 and individuals ~~which~~ that the approving agency reasonably believes to be
7 affected;
- 8 (67) Deposit or require the applicant to deposit, concurrently with the filing in
9 paragraph (4), one paper¹⁵⁸ copy of the draft ~~environmental assessment~~ EA at
10 the nearest state library in each county in which the proposed action is to occur
11 and one paper copy at the Hawaii Documents Center¹⁵⁹;
- 12 (78) Receive public comments, transmit copies of public comments to the applicant
13 and require the applicant to respond to public comments, all in accordance with
14 section 11-200-9.1 for draft ~~environmental assessment~~ EA, or 11-200-15 for
15 ~~preparation notices~~ EISPNS and their associated final ~~environmental assessment~~
16 EA. For draft ~~environmental assessment~~ EA, the approving agency shall require
17 the applicant:
- 18 (A)¹⁶⁰ ~~to provide~~ revise the draft EA with¹⁶¹ ~~whatever~~ information the approving
19 agency deems necessary in accordance with section 11-200-10¹⁶² ~~to~~
20 ~~revise the draft environmental assessment to inform its determination for~~
21 a FONSI or EISPN, taking into account comments on the draft EA¹⁶³;
- 22 (B) to incorporate comments as appropriate; and,
23 (C) to include copies of comment letters and the applicant responses,
24 ~~(the~~ The¹⁶⁴ ~~draft environmental assessment~~ EA as revised shall be filed as a
25 final ~~environmental assessment~~ EA as described in section 11-200-11.2)¹⁶⁵; and

Take one out.

would "support" be a better word?

¹⁵⁵ Adds language to ensure that other sections are fulfilled as well.

¹⁵⁶ Replaces the term "distribute" 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.

¹⁵⁷ Replaces the term "distribute" 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.

¹⁵⁸ 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.

¹⁵⁹ 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.

¹⁶⁰ Breaks up the paragraph so that the three requirements for the applicant are easier to read.

¹⁶¹ Housekeeping.

¹⁶² Emphasizes that the final EA content should still meet the EA content requirements as set for in section 10.

¹⁶³ 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.

¹⁶⁴ Changes the sentence from a parenthetical statement to a standalone sentence.

¹⁶⁵ Changes the sentence from a parenthetical statement to a standalone sentence.

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Leave this in?

1 (89) As appropriate, issue a ~~negative declaration~~ FONSI determination or an
2 ~~environmental impact statement preparation notice~~ EISPN with appropriate
3 notice of determination thereof pursuant to section 11-200-11.2 within thirty days
4 ~~from the end of the thirty day public comment period~~ of receiving information
5 required for delivery to the approving agency pursuant to paragraph 8¹⁶⁶. For
6 ~~preparation notice~~ EISPN determinations, the approving agency shall proceed to
7 section 11-200-15 after fulfilling the requirements of sections 11-200-10,
8 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

9 (c) For agency or applicant actions, the proposing agency or the approving agency, as
10 appropriate, shall analyze or cause to be analyzed in the EA a reasonable range of¹⁶⁷
11 alternatives, in addition to the proposed action in the ~~environmental assessment~~ EA.

12 (d) For agency or applicant actions, if the agency determines, through its judgment and
13 experience, that an EIS is likely to be required, the agency may choose not to prepare
14 an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and
15 instead shall prepare an EIS that begins with an EISPN.¹⁶⁸

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

17 ¹⁶⁶ Changes the deadline from 30 days after the close of the public comment period to 30 days after
18 receipt of the final EA.

19 ¹⁶⁷ Clarifies that the alternatives to be examined are done so in the environmental assessment, not
20 independent of it, and that the agency directs the applicant to analyze alternatives in an
21 applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that
22 not all possible alternatives are required to be analyzed.

23 ¹⁶⁸ Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental
24 assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize
25 applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an
26 EIS beginning with the EISPN.

Additional R. Abe
Comments - 8/20/17

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

§11-200-10 Contents of an Environmental Assessment "proposing agencies and applicants" (See p. 51.)

The proposing agency or approving agency shall prepare any draft or final environmental assessment EA of each proposed action and determine whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in making preparing¹⁸⁶ the assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and summary analysis¹⁸⁷ of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) Agency determination ~~or~~ for draft environmental assessments EAs only, an anticipated determination ~~for draft EAs.~~ *final and*
- (9) Findings and reasons supporting the agency determination or anticipated determination;
- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
- (11) List of all required¹⁸⁸ permits and approvals (State, federal, county) required and identification of which are considered to be discretionary¹⁸⁹; and
- (12) Written comments and responses to the comments ~~under~~ received pursuant to¹⁹⁰ the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods.

Is it clear when it is applicable?
Also, on p. 19, line 8 and 16, it says applicant prepares EA.
Would this be clearer?

¹⁸⁶ Uses more accurate time consistent with language in the rules..

¹⁸⁷ 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 sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

¹⁸⁸ Housekeeping. Moves the word required from the end of the clause to before the word "permits".

¹⁸⁹ Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

¹⁹⁰ Housekeeping.

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1 (bc) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA
2 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date
3 of receipt by the office in accordance with section 11-200-3.

4 (ed) The notice of determination shall indicate in a concise manner:

5 (1) Identification of the²⁰⁴ applicant or proposing agency;

6 (2) Identification of the approving agency or²⁰⁵ accepting authority;

7 (3) ~~Brief A brief~~²⁰⁶ description of the²⁰⁷ proposed action;

8 (4) ~~Determination~~ The determination²⁰⁸;

9 (5) Reasons supporting the²⁰⁹ determination; and

10 (6) ~~Name~~ The name²¹⁰, title, contact information, including the email address,

11 physical²¹¹ address, and phone number of contact person for further information.

12 (de) When an agency withdraws a document, determination, or both²¹² pursuant to ~~its~~ the
13 agency's²¹³ rules, the agency shall submit to the office a written letter informing the office
14 of its withdrawal. The office shall publish notice of agency withdrawals in accordance
15 with section 11-200-3.

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

17 ²⁰⁴ Housekeeping.

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

20 ²⁰⁶ Housekeeping.

21 ²⁰⁷ Housekeeping.

22 ²⁰⁸ Housekeeping.

23 ²⁰⁹ Housekeeping.

24 ²¹⁰ Housekeeping.

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

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

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

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

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§11-200-12 Significance Criteria

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

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

- 9 *Isn't it the extent that matters?*
- 10 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~ *Should this be defined?*
11 ~~cultural resource~~ Irrevocably commits a natural resource²⁴⁰. *Seems like oil, rocks, iron, etc. are all natural resources.*
- 12 (2) Curtails the range of beneficial uses of the environment;
- 13 (3) Conflicts with the state's long-term environmental policies or long-term
14 environmental²⁴¹ goals and guidelines as expressed in chapter 344, HRS, or
15 other laws.²⁴² and any revisions thereof and amendments thereto, court
16 decisions, or executive orders;
- 17 (4) ~~Substantially Adversely~~²⁴³ affects the economic welfare, or social welfare, or
18 cultural practices²⁴⁴ of the community or State;
- 19 (5) Substantially affects public health;
- 20 (6) Involves substantial secondary impacts, such as population changes or effects
21 on public facilities; *Not defined? Qualitative? (typical all over)*
- 22 (7) Involves a substantial degradation of environmental quality;
- 23 (8) Is individually limited but cumulatively has considerable effect upon the
24 environment or involves a commitment for larger actions;
- 25 (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- 26 (10) Detrimently affects air or water quality or ambient noise levels;
- 27 (11) Affects or is likely to suffer damage by being located in an environmentally
28 sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area,
geologically hazardous land, estuary, fresh water, or coastal waters;

29 ²³⁹ Housekeeping.

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

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

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

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

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

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

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 §11-200-14 General Provisions

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

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

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

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

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

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

Doesn't applicant prepare the EIS?

22 ²⁴⁵ Housekeeping. Breaks the paragraph up and helps to see the minimum elements of the EIS process.
23 Renumbers paragraphs based on addition of public scoping meeting.
24 ²⁴⁶ Requires at least one public scoping meeting for an EIS.
25 ²⁴⁷ Emphasizes that the EIS process is to occur before committing to a particular course of action.

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

1 (a)²⁴⁸ An EISPN, including one resulting from an agency authorizing the preparation of an EIS
2 without first requiring an EA, shall indicate in a concise manner:
3 (1) Identification of the proposing agency or applicant;
4 (2) Identification of the accepting authority;
5 (3) The determination;
6 (4) Reasons supporting the determination;
7 (5) A description of the proposed action and its location;
8 (6) A description of the affected environment and include regional, location, and site
9 maps;
10 (7) Possible alternatives to the proposed action;
11 (8) The proposing agency's or applicant's proposed scoping process, including when
12 and where the EIS public scoping meeting or meetings will be held;
13 (9) The name, title, contact information, including the email address, physical
14 address, and phone number of contact person for further information.²⁴⁹

15 (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all
16 appropriate agencies noted in section 11-200-10(10), ~~and other~~²⁵⁰ citizen groups, and
17 concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end,
18 agencies and applicants shall endeavor to develop a fully acceptable draft²⁵¹ EIS ~~prior to~~
19 ~~the time the EIS is filed with the office,~~ through a full and complete consultation process,
20 and shall not rely solely upon the review process to expose environmental concerns. At
21 ~~the discretion of the proposing agency or an applicant, a~~ A public scoping meeting to
22 ~~receive comments on the final environmental assessment (for the EIS preparation notice~~
23 ~~determination) setting forth addressing the scope of the draft EIS may shall~~²⁵² be held
24 within the thirty-day public review and comment period in subsection (bc), ~~provided that~~
25 ~~the proposing agency or applicant shall treat oral and written comments received at such~~
26 ~~a meeting as indicated in subsection (d)~~²⁵³.

27 ²⁴⁸ Creates a new paragraph and renumbers subsequent paragraphs.

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

30 ²⁵⁰ Housekeeping.

31 ²⁵¹ Clarifies that the document is a draft EIS.

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

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

↑
Plural?

need
this?
Seems
confusing.

§11-200-23 Acceptability

- 1 (a) Acceptability of ~~a statement~~ a final EIS³²⁰ shall be evaluated on the basis of whether the
2 ~~statement~~ final EIS³²¹, in its completed form, represents an informational instrument
3 which fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,³²² and
4 adequately discloses and describes all identifiable environmental impacts and
5 satisfactorily responds to review comments.
- 6 (b) A ~~statement~~ final EIS³²³ shall be deemed to be an acceptable document by the accepting
7 authority or approving agency only if all of the following criteria are satisfied:
8 (1) The procedures for assessment, consultation process, review, and the
9 preparation and submission of the ~~statement~~ EIS, from proposal of the action to
10 publication of the final EIS,³²⁴ have all been completed satisfactorily as specified
11 in this chapter;
12 (2) The content requirements described in this chapter have been satisfied; and
13 (3) Comments submitted during the review process have received responses
14 satisfactory to the accepting authority, or approving agency, and have been
15 appropriately³²⁵ ~~incorporated in~~ into the statement final EIS³²⁶, and comments and
16 responses have been appended to the final EIS³²⁷.
- 17 (c) For actions proposed by agencies, the proposing agency may request the office to make
18 a recommendation regarding the acceptability or non-acceptability of the EIS. In all
19 cases involving state funds or lands, the governor or ~~an~~ the governor's³²⁸ authorized
20 representative shall have final authority to accept the EIS. In cases involving only county
21 funds or lands, the mayor of the respective county or ~~an~~ the mayor's³²⁹ authorized
22 representative shall have final authority to accept the EIS. The accepting authority shall
23 take prompt measures to determine the acceptability or nonacceptability of the
24 proposing agency's statement. In the event that the action involves ~~both~~ state and

EIS? Should scan document and fix all.

25 ³²⁰ Clarifies that the document is a final EIS.

26 ³²¹ Clarifies that the document is a final EIS.

27 ³²² Clarifies that the EIS must meet all applicable elements of environmental review.

28 ³²³ Clarifies that the document is a final EIS.

29 ³²⁴ Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates
30 environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

31 ³²⁵ Recognizes that not all comments are incorporated into an EIS.

32 ³²⁶ Clarifies that the document is a final EIS.

33 ³²⁷ Distinguishes comments responded to and resulted in changes to the final EIS and ensuring
34 comments and responses are appended to the document.

35 ³²⁸ Housekeeping.

36 ³²⁹ Housekeeping.

1 Subchapter 9 National Environmental Policy Act

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

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

5 (1) The applicant or agency, upon discovery of its proposed action being subject to
6 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA³⁵⁷, shall
7 notify the responsible federal agency, the office, and any agency with a definite
8 interest in the action (as prescribed by chapter 343, HRS) ~~of the situation~~.³⁵⁸

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

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

20 (24) The ~~National Environmental Policy Act~~ NEPA³⁶¹ requires that draft³⁶² statements
21 EISs³⁶³ be prepared by the responsible federal agency. In the case of actions for
22 which an EIS pursuant to the NEPA has been prepared by the responsible

23 ³⁵⁶ Housekeeping.

24 ³⁵⁷ Housekeeping.

25 ³⁵⁸ Housekeeping.

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

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

33 ³⁶¹ Housekeeping.

34 ³⁶² Language is applicable to draft and final.

35 ³⁶³ Housekeeping.

PRELIMINARY WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council Permitted Interaction Group Report

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

1 Subchapter 10 Supplemental Statements

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

2 **§11-200-26 Supplemental EIS³⁷³ General Provisions**

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

- 12 (1) The project has changed substantively in the following characteristics: size,
13 scope, use, location or timing, among other things, which may have a significant
14 effect; or³⁷⁴
15 (2) New information indicating significant effects, which was not known and could not
16 have been known at the time the EIS was accepted as complete, becomes
17 available.³⁷⁵

18 (b) In the case of newly discovered information, the decision to require preparation of a
19 supplemental EIS must be based on the following criteria:

- 20 (1) The information can be from any source.
21 (2) The information must be newly discovered. It cannot be information that could
22 have been included in comments filed in the original draft EIS or final EIS.
23 (3) The information must be important, indicating probably significant environmental
24 impacts.
25 (4) The information must not have been addressed in the prior EIS, or must have
26 been inadequately addressed.³⁷⁶

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

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

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

33 ³⁷⁵ Adds a change in knowledge as a potential reason to require a supplemental EIS.

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

Edits to Rules Version 2017.01 footnotes

Footnote 22: Add quotes around “cultural” and “environment”

Just a thought: “align the definition with Act 50” instead of current language

Footnote 41, 1st line: replace “this” with “that”

Footnote 56: put “anymore” at the end of the sentence

Footnote 63: Add quotes around the word “final”

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

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

Footnote 74: add the word “the” between “that” and “approving”

Footnote 106: change “direction” to “direct”

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

Footnote 118, 2nd line: add “of” between “use” and “state”

3rd line: should “and” be “or”? Just checking

Footnote 126, 2nd line: change “five years concurrence” to “five-year concurrence”

Footnote 129: and “a” between “has” and “duty”

Footnote 143: change “distribute” to “distribution” to match section heading

Footnote 150, 2nd line: change “30” to “thirty” to be consistent with first line

Footnote 156: change “distribute” to “distribution” to match section heading

Footnote 157: change “distribute” to “distribution” to match section heading

Footnote 167: delete comma after “Act 172”

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

Footnote 173: change “not” to “no”

Footnote 174: delete “as”

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

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

Footnote 183: same comments as Footnote 179

Footnote 186: think this footnote could use more clarity

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

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

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

Footnote 219: missing period at end of sentence

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

Footnote 257: change “EI” to “EIS”

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

Footnote 265: add quotes around the word “cultural”

Footnote 268: add quotes around the word “cultural”

Footnote 271: add quotes around the word “statement”

Footnote 275: add quotes around the word “statement”

Footnote 283: finish sentence

Footnote 287: add quotes around the word “any”

Footnote 296: add “that” between clarifies and this

Footnote 296: add quotes around the word “detail”

Footnote 315: same comments as Footnote 179

Footnote 319: delete “i.e.,”

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

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

Footnote 348: missing period

Footnote 350: missing period

Footnote 354: change “EC” to “Council”

Footnote 355: capitalize “Council” to be consistent

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

Footnote 365: maybe spell out what “WAC” is

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

Footnote 376: change “could” to “can”

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