

From: Felicia Alongi Cowden
To: [HI Office of Environmental Quality Control](#)
Subject: Regarding concerns of V3 for Administrative Rules for Environmental Impact Statement
Date: Sunday, October 29, 2017 10:54:13 PM

Aloha Environmental Council,

Reviewing V3 of the Hawaii Administrative Rules Update on the Chapter 11-200 released the **night before the public comment deadline**, the amendment violates the spirit of HRS chapter 343 on Environmental Impact Statements. HRS 343 is intended to protect not only the environment but more importantly the democratic process.

This is an egregious example of powerful industry players writing the rules for the regulators to exonerate themselves from the required accountability. The Hawaii Environmental Policy Act is intended to protect the land from exploitation and damage.

Group 70 has demonstrated their clear disregard for Environmental Assessments and Cultural Impact Surveys this year. I was at district court when Hawaii Dairy Farms was informed their Final Environment Impact Statement (FEIS) was deficient. Rather than comply with HEPA in conducting their Environment Impact Statement (EIS), they are now actively trying to change the very regulations that they failed to comply with. Specifically, they want to eliminate the developer's requirement to answer each public comment filed in response to a draft EIS. The Environmental Council (EC) Draft Version .3 adopts the Ulupono/Group 70 recommendation that a developer be allowed to batch the comments and frame one response to the batch without needing to address/respond to each comment which is now the law.

The Department of Health found the Hawaii Dairy Farms insufficient in their requirements, as well. In the court room, the Hawaii Department of Health testified that they only process the required paperwork rather than research, monitor or enforce those requirements. The judge rescinded all of the permits.

The dairy in O`okala is a clear example of the failure to regulate or enforce environmental policies.

This administrative rule change shifts the benefit to the corporate interests that have a proven track record of recklessness. Do not erode the protections of the law and allow one response to batched inquiries. The citizen efforts to protect the environment have no direct financial reward to the people, but a lot of costs. This is an unfair swing to benefit offending exploitative business ventures.

As a public affairs programmer for community radio, I have regular exposure to controversial projects in the islands in which the rules and regulations already throw the balance of power toward the powerful. This will effect many diverse efforts in the future. Don't make it worse.

Felicia Cowden
Kilauea, Kauai

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feliciacowden.com

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From: Debra Holvick
To: [HI Office of Environmental Quality Control](#)
Subject: Can you revise the EIS process to ensure an unbiased report?
Date: Thursday, November 9, 2017 12:41:03 PM

Dear EIS Revision Committee:

Munekiyo Hiraga Company has been hired by Lowe Enterprise Development, the developer, to write the EISPN, Draft EIS and Final EIS, as well as securing all permits or entitlements to proceed with redeveloping the Kaanapali Golf Courses.

Hiraga's EISPN was published in May 2017 and is attached below for your referral. It is blatantly obvious, that everything they said in the notice was geared in favor of their client. For example, they used repetitively the client's biased word, "revitalization" verses "redevelopment". They made incorrect statements told to them from Lowe, such as golf is on the decline. It read like an infomercial and actually, I think it was written by either Lowe or the land owner, the State of Hawaii pension fund. At the very least, it was edited by them.

Last night, November 6, a meeting was held in Lahaina for the public to meet the developer and pension fund land owner. Mr. Munekiyo spoke as the representative of the developer, Lowe. He said his company is a "planning consulting firm" hired by Lowe Enterprise to provide the EIS and building permits. They didn't even try to hide the fact of who they are working for. See video of this meeting attached below.

It is obvious that their EIS reports will be worthless and totally biased in favor of their client. It is similar to hiring a law firm to represent a company, whereby they are paid to slant everything in the favor of their client. It will trickle down, and their traffic consultants etc., will be biased in favor of the developer (that is why, on Oahu, those fighting for the preservation of Turtle Bay had to hire a traffic consultant firm from the mainland to get an unbiased report.)

This is very wrong. It undermines the entire process and makes a mockery of the process. I don't know why this is so in Maui. I make my living in real estate in California and I can tell you, the EIS companies that are hired here are never biased. I was shocked to see it so different in Maui. I don't know why the political system in Hawaii supports this kind of behavior.

What can you do to stop this misuse of the EIS process and how soon can it be implemented in Maui? Hiraga's Draft EIS is due to be published in the 3rd quarter of 2018. Is it too late for this project?

Thank you. I await your response.

Debra Holvick

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 [Final_EISPN_Report.May_2017.pdf](#)

<https://youtu.be/wTfABQ5vJ6g>

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November 17, 2017

(via E-Mail: oeqchawaii@doh.hawaii.gov)

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

Re: Hawaii Gas Comments on Proposed Draft Hawaii Administrative Rules, Chapter 11-200,
Environmental Impact Statement Rules, Version 0.3

Dear Mr. Glenn:

Thank you for the opportunity to provide comments on the proposed draft Hawaii Administrative Rules, Chapter 11-200, implementing the environmental review process as provided for in Chapter 343, Hawaii Revised Statutes (HEPA).

Since 1904, Hawaii Gas has been serving as the State's only regulated gas utility, providing safe and reliable gas service through our utility pipeline system and tanked and bottled propane services. We are proud to have been serving our islands for over a century, and are committed to being an integral part of Hawaii's clean and renewable energy future.

Hawaii Gas is concerned that certain aspects of the proposed rules will have a direct impact on our ability to provide timely service to new customers requiring gas extension projects, and to develop more renewable energy projects. We understand that the intent of the proposed rules is to better align HEPA with the National Environmental Policy Act (NEPA), which we fully support. However, it is not clear that the proposed rules will effectively accomplish that goal. We fear that the rules may in fact be more onerous than NEPA and make the process lengthier, with no apparent environmental benefit.

Before moving forward with the proposed rules in their current form, we respectfully request that you consider whether the rules would detract from the overall effectiveness of the environmental review process, which would have a detrimental impact on our ability to implement important projects furthering Hawaii's energy resiliency and clean energy future.

We thank you for the opportunity to provide comments on the proposed rule amendments, and appreciate the important work that you do to protect the pristine environmental quality of our islands.

Sincerely,

Joseph J. Boivin, Jr.
Senior Vice President, Business Development & Corporate Affairs
Hawaii Gas

Comments by The Nature Conservancy of Hawai‘i on
Version 0.3 of the Proposed Update to HAR Chapter 11-200, EIS Rules
Hawai‘i Environmental Council, Hawai‘i Office of Environmental Quality Control
November 22, 2017

The Nature Conservancy thanks the Environmental Council members and the staff of the Office of Environmental Quality Control for your hard work through the three draft versions of proposed updates to Hawai‘i Administrative Rules (HAR) Chapter 11-200 relating to environmental assessments and environmental impact statements. We appreciate your thorough approach and the opportunity for stakeholders to participate in this early engagement in advance of the formal rulemaking process. Your foresight and willingness to undertake this significant amount of early work and provide open dialogue is an excellent example of good government.

We don't have specific comments or proposed edits at this time. We only wish to express our general appreciation and support for what you have done with the proposed revisions and, in particular, call out your work to clarify the significance criteria in Subchapter 7A and exemption provisions in Subchapter 8A.

The significance criteria clarifications you have proposed in §11-200A-12A(b) calling out “substantial degradation” and “substantial adverse effect” on natural resources, environmental quality, species and habitat, and air and water quality help to distinguish actions that benefit the environment. Many natural resource conservation projects like controlling invasive plants and animals substantially improve the condition, health and function of the environment for both ecological and human well-being. Over many years, environmental assessments for these types of actions across the state have consistently received findings of no significant impact.

The amendments you have proposed in §11-200A-16A and -17A provide helpful guidance to agencies on evaluating the merits of proposed exemptions, consultation with other agencies, publication of exemptions notices, and developing and seeking council concurrence on exemption lists. Again, many natural resource management actions have minimal or no significant adverse effects on the environment and are exactly the types of beneficial actions that can and have been justifiably exempt from preparing environmental assessments and impact statements.

Thank you again for your good work and the opportunity to provide these comments.

From: Eileen Kechloian
To: [HI Office of Environmental Quality Control](#)
Subject: Comments on HCR 11-200 v 0.3
Date: Sunday, November 26, 2017 8:43:01 PM

November 26, 2017

To: Environmental Council, State of Hawai'i
235 South Beretania Street, Suite 702
Honolulu, Hawai'i 96813

Subject: Comments on the proposed revisions to HAR chapter 11-200, v. 0.3.

Aloha e Members of the Environmental Council,

I have made comments directly onto your interactive format. These are additional comments.

In regards to experts and preparers education, expertise and experience should be include in EAs/EIS.

Suggested verbiage:

The environmental impact statement shall list the names, together with their qualifications (education, expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the EAs/EISs or significant background papers, including basic components of the statement.

(There needs to be an arm's length distance between the preparers/experts and the client requesting the EIS/EA.)

In regards to subsistence in communities. Suggested verbiage:

Applicant and agencies shall collect, maintain, and analyze information on patterns of subsistence consumption of fish, vegetation, or wildlife. Where an applicant or agency action may affect fish, vegetation, or wildlife, that an action may also affect subsistence patterns of consumption and indicate the potential for disproportionately high and adverse human health or environmental effects on low-income populations, minority populations, Indian tribes and Hawaiian populations.

In regards to "oral" commenting. Suggested verbiage:

Applicants/agencies shall provide opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.

In regards to aquifers and drinking water.

Applicants/agencies shall identify size and location of aquifers near their projects/programs and provide relevant maps of aquifers and their capture zones with a topographical overlay. Applicants/agencies should identify and analyze any significant groundwater impacts of their actions in cases where a particular aquifer may be affected.

In regards to wetlands.

There shall be 1,000 foot setback from any drinking water resources and 50 feet from surface waters. Waste storage nor waste shall not be located in wetlands.

In line 13/14 on habitats add:

It is imperative that habitat that can sustain endangered or threatened species not be allow to be disturbed or the species will not have a habitat to grow into and thrive. Suggested: or habitat that is inviting and supportive of endangered threatened species not currently located there.

General Plans of the Islands:

Projects or Programs denoted on an island's General Plan but not yet issued building permits should not be exempt from having to do an EA or EIS if conditions exist that one should be done. (Those projects/programs where land use would change from agriculture.)

In regards to Use Studies:

A study of the uses in and around a project/program to determine impacts. (ie. Recreational use, fishing, hunting)

Include on page 40 (11) "increased exposure to hurricanes".

Would it be possible to include something that would make it possible for a knowledgeable person, who understands the EIS process come to speak with the communities at the community's request about the process of scoping and commenting.

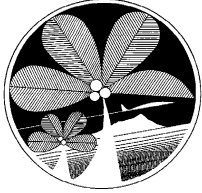
"Substantive" needs to be defined.

"Responsible opinion" and "responsible opposing view" also need defining or clarification.
Page 40 7-9

Mahalo for the opportunity to give input on HCR 11-200A v 0.3,

Eileen Kechloian

AIRLINES COMMITTEE OF HAWAII



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November 27, 2017

State Environmental Council
Office of Environmental Quality Control
235 S. Beretania Street, Suite 702
Honolulu, HI 96813

RE: Comments on Proposed Revisions to HAR Title 11-200 Environmental Impact Statements

Aloha Chair Shacat, Vice Chair Glenn and Members of the Council,

The Airlines Committee of Hawaii (ACH), which is made up of 20 signatory air carriers that underwrite the State of Hawaii Airports System, appreciates this opportunity to submit comments regarding Version 3 of the Working Draft of Proposed Revisions to Hawaii Administrative Rules (HAR) Title 11-200 regarding Environmental Impact Statements (EIS) (“Proposed Amendments”). Our members have concerns over the impact that the Proposed Amendments would have on future airport projects, as well as the community statewide.

In particular, ACH is concerned about the following Proposed Amendments:

- A five-year EIS shelf-life
- Responses to all comments regardless of substance or relevance
- Identification of “discretionary” permits
- Mandatory scoping meetings
- Programmatic EIS options

1. A Five-Year EIS Shelf-Life

While the Proposed Amendments now do not contain a five-year shelf life, previous versions of the Proposed Amendments provided a presumptive shelf-life of 5 years for EIS documents. ACH would like to ensure that a five-year shelf life remains permanently off the table. A five-year shelf life would be catastrophic for many significant projects in Hawaii.

The permitting process in Hawaii alone has taken more than 5 years for many of the most important projects in Hawaii. For instance, the LUC and appeals process for the Koa Ridge project took the EIS beyond the 5-year mark. The BLNR and appeals process for the Thirty Meter Telescope project took the EIS beyond the 5-year mark. It appears that any time a project involves a multi-level permitting process, along with contested case hearing requirements and appeals, it is

almost assured to take more than 5-years to obtain approvals. Requiring a supplemental EIS once approvals have passed a 5-year mark will delay and kill needed and worthy projects. There is simply too much risk, procedurally and financially, to invest in a project that may be subject to constant challenge every 5 years through the supplemental EIS process.

Moreover, there is already a workable standard for requiring a supplemental EIS under the well-reasoned Turtle Bay case. Where the passage of time has caused the project to be an essentially different action, a supplemental EIS is triggered. It is not, however, the passage of time alone that triggers this requirement. This is important because many of Hawaii's significant projects, including airport projects, will no doubt surpass the 5-year mark due to the lengthy and involved permitting process. However, it is only when the project actually changes during this time period that a supplemental EIS becomes necessary. This standard is much easier for investors to assume.

Accordingly, it is respectfully requested that the Proposed Amendments continue to reject any kind of shelf life based upon the mere passage of time alone.

2. Responses to All Comments Regardless of Substance or Relevance

While the Proposed Amendments now do not contain a requirement to respond to all comments, regardless of materiality or substance, previous versions of the Proposed Amendments required such. ACH would like to ensure that such an onerous requirement remains deleted from the Proposed Amendments for the simple reason that limiting responses to those that are substantive is consistent with the purpose of HRS Chapter 343 and the definition of an EIS as an informational document designed to enable a decisionmaker to consider environmental impacts of a proposed action. Non-substantive comments that are irrelevant should have no bearing on the decisionmaking process. Requiring responses to these non-substantive comments will make it more difficult for decisionmakers to wade through an already lengthy document, especially for larger projects (such as airport projects) for which there may be a more expansive public interest and thousands of comments.

Accordingly, ACH requests that the Proposed Amendments continue to require responses only to written substantive comments.

3. Identification of "Discretionary" Permits

Language in the Proposed Amendments regarding the requirement to identify discretionary approvals is confusing and necessitates a legal review that may unnecessarily place a project at risk. What constitutes discretionary approval is a fact-specific analysis with major legal implications that typically involve a lengthy legal analysis of the permitting process to determine when vesting occurs. There is no way to control the qualifications or experience of the person making this assessment, unless such analysis comes directly from the courts. It is thus risky to place this kind of analysis in the hands of project applicants.

Accordingly, the language in the Proposed Amendments requiring the identification of discretionary approvals should be removed.

4. Mandatory Scoping Meetings

The Proposed Amendments require at least one EIS scoping meeting “in the area affected by the proposed action” as well as a “written summary” of oral comments made during the meeting and identifying those making the comments. The scoping meeting requirement is another step in a lengthy and costly process that already provides numerous opportunities for public input.

Accordingly, ACH requests that the mandatory scoping meeting be removed from the Proposed Amendments.

5. Programmatic EIS Options

While the Proposed Amendments provide the ability to do a programmatic EIS, previous versions of the Proposed Amendments did not provide such opportunity. ACH would like to ensure that programmatic EIS options remain. The ability to do a programmatic EIS is essential for long-term phased projects. In Hawaii, many projects, including those at the airport, require a phased approach. Phasing allows for better overall planning and development. It allows public places, such as airports, the ability to make improvements while also ensuring access to essential government functions, like travel.

Accordingly, ACH requests that the Proposed Amendments continue to provide for the ability to conduct a programmatic EIS.

Thank you for your consideration of our comments.

Sincerely,

Blaine Miyasato
ACH Co-chair

Matthew Shelby
ACH Co-chair

November 27, 2017

To: Environmental Council, State of Hawai‘i
235 South Beretania Street, Suite 702
Honolulu, Hawai‘i 96813

Subject: Comment of the Friends of Māhā‘ulepū to the Environmental Council, proposed revisions to HAR chapter 11-200, v. 0.3.

Aloha e Members of the Environmental Council,

Please find below the comments of the Friends of Māhā‘ulepū, a 501(c)(3) nonprofit organization based on Kaua‘i (“FOM”) on HAR chapter 11-200, Environmental Impact Statement Rules, v. 0.3. We appreciate the opportunity to contribute. Our environment is fragile and irreparable harm should be avoided whenever possible.

1. *Clarify tensions between the expansive “cumulative impact” of the narrowing term “action” under “Determination of Level of Environmental Review” pursuant to proposed HAR §11-200A-13A.*

The unit of review used to determine the level of environmental review for both agency and applicant actions is whether “the significance of the potential impacts of the action, including the overall cumulative impact in light of related past, present, and reasonably foreseeable actions in the area affected[.]” HAR §11-200A-13A (a) & (b). FOM applauds these provisions, but suggests that this phrase may be improved to better ensure that the true significance of a proposed project or program is assessed.

This suggestion arises from debates arising from a perceived tension between “action” and “cumulative impact.” Project proponents typically argue “cumulative impact” is bounded by a specific proposed “action,” which is defined as “any program or project to be initiated by the agency or applicant.” HAR §11-200-2. Such interpretations incorrectly ignore the definition of “cumulative impact,” which includes “other actions” and “significant actions taking place over a period of time.”¹ Put otherwise, the debate concerns whether the narrowing term “action” takes precedence over the more comprehensive lens of “cumulative impact” in determining levels of significance. For instance, FOM commented that installation of dairy cows by the proposed Hawai‘i Dairy Farm (HDF) would increase run-off contamination of the already-degraded Wai‘ōpili ditch/ stream waters. The applicant, however, insisted additional contamination attributed to its project would not, by itself, raise the bacterial count to the levels seen in Wai‘ōpili stream.² Rather, the contribution of their specific “action” would not be a significant

¹ The definition of “cumulative impact” remains largely unchanged in the proposed HAR §11-200A-2A v. 0.3, which provides that it:

means the impact on the environment 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.

² See Group 70 Int’l Memorandum to HDF Project Team, Subject: Response to Comment Letter, at 9 (Dec. 21, 2016) in *HDF FEIS*, vol. 4 [PDF page 637].

impact. Under this application, HRS chapter 343 merely facilitates equal opportunity pollution, as opposed to disclosing the true environmental impacts of further degrading Hawaii's lands and waters.

Although the tension may be more perceived than a real error in the language of the rules, adjusting the use of "cumulative impact" in HAR §11-200A-13A could reduce disputes. Thus, we suggest proposed HAR §11-200A-13A v. 0.3 provisions be amended to read:

the significance of the potential impacts of the action, ~~including~~ **which become part of** the overall cumulative impact ~~in light~~ of related past, present, and reasonably foreseeable actions in the area affected[.]

HAR §11-200A-13A (a) & (b) (suggested language). This language would underscore that it is the action's contribution to accumulated *impacts* that should be assessed in determining the level of environmental review.³

2. *Require evidence-based support for findings that mitigation measures will have intended beneficial impacts in both EAs and EISs.*

Mitigation measures have been improperly used as a back-door to allow significant environmental impacts to go unchecked. The current HAR chapter 200 and proposed v. 0.3 requires a list and discussion of mitigation measures, "reasons given for the choice made" and "where possible," inclusion of other provisions "proposed to assure that the mitigation measures will in fact be taken" in the preparation of EISs. HAR §11-200A-24A(d)(3) & (p).⁴ Proposed mitigation measures are merely required to be listed in draft and final EAs. HAR §§ 11-200A-18A(d)(8), -21A(7). In practice, mitigation measures are often conclusory recitations of actions that have unproven, and often illogical relationships to adverse impacts that were required to be mitigated. In the federal context, "[a] mere listing of mitigation measures is insufficient to quality as the reasoned discussion required by NEPA." *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), rev'd on other grounds, *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988).

The following are examples of insufficient proposed mitigation measures that were nevertheless accepted as mitigating significant impacts:

- (i) The FEA for a proposed development in Mākena, Maui proposed that its provision of ten public parking stalls at Mākena Landing would mitigate impacts on recreational

³ FOM notes that "cumulative impact" is not defined by statute (*see* HRS §343-2), and therefore no concerns that the Council would be exceeding its authority are raised by this suggested amendment.

⁴ HAR §11-200A-24A(p) (v.0.3) provides:

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. The draft EIS shall include, where possible specific reference to the timing of each step proposed to be taken in any 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.

resources, while failing to also indicate that its “landscaping plans” would remove 42 existing frequently used roadside parking, resulting in a net loss of 32 parking stalls.⁵

- (ii) Mitigation in the FEIS for the Thirty-Meter Telescope (TMT) consisted of a “community benefits package,” an outreach office, and a workforce pipeline program, ride-sharing program, Native Hawaiian furnishings with “a sense of place,” and paving roads -- none of which would lessen the *environmental* impacts of constructing a five - acre private industrial park on a sacred, ecologically fragile landscape and conservation district. Here, mitigation had no direct ameliorative relationship to the TMT’s substantial *environmental and cultural* impacts.
- (iii) The Hawai‘i Dairy Farm (HDF) EIS, which was withdrawn before the agency could decide whether to accept it, proposed similarly deficient mitigation measures. Built on former sugar-cane fields, the proposed dairy site was riddled with irrigation ditches that emptied into the already impaired Wai‘ōpili stream. HDF proposed planting a vegetation “buffer” alongside the ditches to minimize runoff. HDF failed to explain or address how a vegetative buffer would prevent runoff of the planned 70,000 lbs of liquid manure daily. They also didn’t address the fact that there were “numerous drainage ditches running throughout their pastures” in addition to deep channel ditches that drained what was formerly the Maha‘ulepu Swamp. A vegetative buffer along all its ditches is unlikely as too much pasture land would be consumed by buffers. HDF’s consultant, Marine Research Consultants, Inc., concluded the nearshore waters into which Wai‘ōpili ultimately empties, would not be significantly impacted because “[w]ithin 10 meters of the shoreline, water quality is within DOH standards.” Put otherwise, water pollution mitigation measures were effective because the first 10 meters of nearshore waters would dilute the pollutants below acceptable standards. So actually, it was the ocean that would be mitigating nearshore impacts and the stream would be further impaired. Nothing was said about the likely algal blooms and irreparable harm to the nearshore corals reefs.

In contrast, an example of more exacting mitigation measures implemented to support the agency’s conclusion that approving a conservation district use permit (CDUP) for a highway construction project through endangered species’ critical habitat project would not cause a substantial adverse impact can be found in *Morimoto v. Board of Land & Natural Resources*, 107 Hawai‘i 296, 113 P.3d 172 (2005). On review of this case, it is obvious how *Morimoto* EIS mitigation measures “legally bound” project proponents to “mitigation commitments” that were set forth in a U.S. Fish & Wildlife Service (FWS) biological opinion (BiOp); a detailed mitigation plan developed by expert agencies and legally binding on the parties; and the measures were logically designed to address expected adverse impacts. The BiOp included a “detailed plan to offset damage to [100 acres of] Palila critical habitat and minimize effects on the species,” which included acquiring 10,000 acres for critical habitat restoration, realigning the highway path to avoid protected plants, lighting restrictions, fire hazard minimization, and monitoring by “a qualified ornithologist” to ensure the project would be halted within one kilometer of any discovered nests. *Id.*, 107 Hawai‘i at 299-300, 113 P.3d at 175-76. *Morimoto*

⁵ See Testimony of Michael Pasco to the Maui County Planning Commission, Mar. 14, 2017, as videorecorded by Akakū Community Media, “Planning Commission Pt 2,” (timecode 00:17:08 to 00:26:12 minutes) (published Mar. 15, 2017), available at: https://archive.org/details/170315BCPlanningCommissionPt2_201703.

mitigation was appropriately based on site specific data, were vetted by agencies with expertise, and were structured to ensure checks on the efficacy of the mitigation.

We encourage the Council to adopt strong standards to ensure mitigation measures have more than a glancing connection to the expected adverse impacts and to impose those standards on EAs as well as EISs.

3. *Provisions for identical or very similar comments should consider the weight of repetitions and discretion exercised in determining similarities.*

FOM was provided helpful clarification in response to its testimony letter dated October 31, 2017 concerning “identical or very similar” comments provided under working draft v. 0.2 provisions, §11-200-9.1(c) and §11-200-17(p). FOM incorporates by reference the policy concerns we earlier raised concerning the inordinate discretion conferred on EA/ EIS preparers in the absence of a requirement that all similar comments be reproduced as part of the EA/ EIS.

The current v. 0.3 HAR § 11-200A-20A(d), -24A, and -26A importantly require the listing of each individual commenter who provided *identical* comments, which may occur where commenters employ form letter, petitions, or postcard comments. HAR § 11-200A-20A(d), -24A, and -26A *should further* require recitation of the number of identical comments received, particularly because it may be that the author of some identical comments is unknown.

Further, HAR § 11-200A -20A(d), -24A, and -26A v. 0.3 should include a provision requiring the EIS preparer to reproduce every comment deemed “very similar” such that the public and the receiving agency can review discretion exercised by the preparer in determining similarities and whether a comment was non-substantive. FOM is not opposed to an appropriate single response to multiple comments submitted through form letters or postcards. However, EA/EIS preparers’ discretion in determining any groupings should meet with a high degree of scrutiny. *See* HAR chap. 11-200 v. 0.3, fn. 361.

4. *Affordable housing developments are actions with potential significant environmental impacts requiring review.*

HAR §11-200A-15A(c)(10) v. 0.3 proposes to recognize “[a]cquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing . . .” under “general types of actions eligible for exemption.” Affordable housing projects have environmental impact footprints that should be disclosed to decision makers in their review. In 2007, the Hawai‘i Housing Finance and Development Corporation’s filed a Petition for Rulemaking to Amend Hawai‘i Administrative Rules, Section 11-200-8(a) by Adding a New Exempt Class of Action for the Acquisition of Land and Existing Structures for Affordable Housing, Including the Kukui Gardens. The exemption was apparently granted, although it had not been compiled under the HAR chapter 11-200 (2008) version of the rules.

The Council’s authority extends to “[e]stablishing procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment[.]” HRS §343-6(a)(2). HRS chapter 343 intended that this authority be exercised under HRS chapter 91 rulemaking

procedures. The Council is fully authorized to remove the affordable housing exemption during its upcoming HRS §91-3 rulemaking proceedings and it should do so for several reasons.

First, Hawaii's affordable housing "fast-track" statute, HRS chapter 201H, already references specific exemption privileges for affordable housing projects and the legislature specifically did not include exemptions from HRS chapter 343.⁶ Use of the Council's rulemaking authority to add such an exemption where HRS § 201H-38 specifically did not provide one would amount to an end-run around the legislature's purpose and intent in crafting a mechanism that balances the urgency to fulfill affordable housing needs with smart planning and environmental protections. Hawai'i communities need affordable housing, but shortcuts through environmental review processes are not the way to meet that need.

Second, exempting the decisions on the acquisition of land and existing structures conflicts with HRS chapter 343 mandates that environmental assessment occur at the "earliest practicable time[.]" HRS §343-5(e). This mandate is key to the purpose and intent of providing meaningful review of decisions that could significantly impact Hawaii's environment.

Third, as a practical matter, affordable housing land and structure acquisition would anyway be subject to environmental disclosure document preparation because most conceivable affordable housing projects have potential significant environmental impacts. The addition of affordable housing land and structure acquisition merely confuses the significance of the exemption, because the exemption would not apply in most instances anyway.

5. Public scoping requirement is a prudent and helpful addition.

HAR §11-200A-23A(d) v. 0.3 public scoping requirements for EISs is prudent and an appropriate provision to expedite and improve environmental review. Fully-informing and involving agencies, members of the public, and others in developing the scope of the draft EIS will head off irrelevant comments and incorrect information about potential impacts of proposed actions.

Public scoping meetings would also raise awareness of the ways feasible alternatives are part of the environmental review process. Too often, communities are made to feel that their only options in regard to proposed actions are to accept them with mitigating options - or to reject them outright. The provision of public scoping processes appropriately invests interested persons in the development of action alternatives are an essential part in addressing the scope of an EIS and the public can propose alternatives.

Removal of the preparer's responsibility for recording oral comments (fn. 421) and rather replacing them with a general summary HAR §11-200A-24A(s)(4) may reduce public confidence in the public scoping process. For this reason, FOM supports the Council's requirement that oral testimony be preserved on a recording that can be accessed later by the preparer and the reviewer, particularly in light of the rich Hawaiian tradition to offer oral comment, comments that are often invaluable and might otherwise be lost because the

⁶ Under certain conditions, the Hawai'i Housing Finance and Development Corporation may develop housing projects and receive exemptions "from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units[.]" HRS §201H-38(a) (emphasis added).

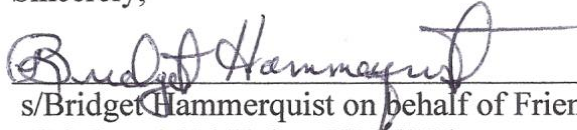
commenter doesn't have the confidence or maybe skill to reduce them to writing. To encourage participation, the public should be notified that all comments will be preserved and available for review.

Finally, v. 0.3 provisions are silent as to when and how the preparer should address public scoping input to the development of the proposed scope of the EIS. We suggest that the agency or applicant be required to consider and respond to every reasonable comment or alternative proposed during the EIS scoping process prior to preparation of the Draft EIS. When the agency or applicant releases the EIS scoping comments and their responses in the Draft EIS, it is virtually impossible for the public or reviewing agency to determine whether scoping comments and/or alternatives were adequately considered in the preparation of the Draft EIS. The 45 day review period of the Draft EIS does not permit review of both the Draft EIS contents and responses to scoping comments to assure that the scope of the EIS is adequate. Efforts to either define the scope of the proposed action or to define alternatives are too easily lost, ignored or forgotten when not released to the public until the Draft EIS. *Compare* HAR §11-200A-23A(d).

Conclusion

Mahalo nui for providing this opportunity to review and comment on your working draft of HAR chapter 11-200. This process goes above and beyond normal rulemaking processes, and should be commended. FOM looks forward to submitting further comment on the next version of HAR chapter 11-200. Please contact us with any questions.

Sincerely,



s/Bridget Hammerquist on behalf of Friends of Maha'uelpu
PO Box 1654 Koloa, HI 96756
808-742-1037



27 November 2017

**Office of Environmental Quality Control
Director Scott Glenn**

Aloha,

These remarks are being offered on behalf of the Hawai`i Island Economic Development Board, a private, member-based 501(c)3 organization incorporated in 1984 to help strengthen and diversify Hawai`i Island's economy. Between November 1st and today, we have reviewed three (3) versions of draft proposed changes to Hawai`i's environmental rules and have participated in several meetings with Environmental Council representatives and others to discuss the proposed rule changes.

While we have identified several points for which we seek additional clarification and discourse, we have not been able to pause long enough to finalize our list of clarifications sought and/or concerns, nor have been able in that time to meet with our governing board to secure authorization to issue remarks. Our next meeting of the governing board is being held on December 15th.

The Environmental Council representatives have expressed that they have been working on these proposals for years and although we respect the work they have done and their service on behalf of the community on the Council, we are concerned about the expedited timeline between comment period and public meetings. Our initial outreach to Hawai`i Island stakeholders has confirmed that very few are aware that changes are being proposed and even fewer have given consideration and/or conducted a comprehensive review of the proposed changes.

Our initial review has identified several points for which we seek additional clarification and/or have concerns including and not limited to, inadvertent consequences. Specific proposed changes about which we are concerned include and are not limited to

- **Imposition of a 5-year requirement**
- **Definition of "Substantive Commencement"**
- **Requiring responses to "ALL" comments – what of immaterial comments?**
- **Requirement that each required permit be identified as whether or not "discretionary"**
- **Requirement for mandatory scoping meetings and related documentation requirements**
- **Increasing Council's response time to appeals**
- **Exclusion of Programmatic EIS options previously proposed**

Based on the aforementioned, we humbly request that the Council's decision making on these proposed changes be deferred to allow stakeholders the opportunity for a comprehensive review of proposed changes as well as, to secure approval from Boards of Directors who must be provided with information and authorize statements to be issued.

Respectfully submitted,

Jacqui Hoover, Executive Director/COO



Michael T. Munekiyo
PRESIDENT

Karlynn K. Fukuda
EXECUTIVE VICE PRESIDENT

Mark Alexander Roy
VICE PRESIDENT

Tessa Munekiyo Ng
VICE PRESIDENT

November 27, 2017

Scott Glenn, Director
State of Hawai'i
Department of Health
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawai'i 96813

SUBJECT: Proposed Revisions to Hawai'i Administrative Rules, Chapter 11-200 Hawai'i Environmental Impact Statement Rules – Version 0.3, October 31, 2017

Dear Mr. Glenn:

Thank you for the opportunity to review and provide comments on the proposed revisions to the Hawai'i Administrative Rules (HAR), Chapter 11-200 Hawai'i Environmental Impact Statement Rules – Version 0.3, dated October 31, 2017. We appreciate the Office of Environmental Quality Control (OEQC) and Environmental Council's (EC) continued efforts on this matter. Munekiyo Hiraga offers the following comments and recommendations for your consideration on Version 0.3 of the HAR. We have outlined our comments by section of the rules to assist with the review.

A. **HAR 11-200A-5A, Filing Requirements for Publication and Withdrawals (e)(1) (C) and 11-200A-23A Consultation prior to a Filing of Draft EIS**

1. We note that this provision states that when a Draft EA is filed with an anticipated Finding of No Significant Impact (FONSI), or an Environmental Impact Statement Preparation Notice (EISPN) is filed, the *"...proposing agency or approving agency shall: distribute, concurrently the Draft EA (or EISPN) to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the **proposing agency** reasonably believes to be affected."* We wondered if this section should also include language in the case of applicant actions.

Scott Glenn, Director
November 27, 2017
Page 2

B. HAR 11-200A-7A (a), Identification of Approving Agency and Accepting Authority and HAR 11-200A-28A (c), Acceptability

1. The proposed rule revisions provide that where State and County lands or funds are used, the Governor is the accepting authority for the EIS documents. Item 11-200A-7A(a)(2) states that *"In the event that an action involves state and county lands, state and county funds or both state and county lands and funds, the governor or the governor's authorized representative shall have authority to accept the EIS."* Further Item 11-200A-7A(c) (5) notes, *"In the case of an action with proposed use of state and county lands or funds, which agency has the most land or funds involved in the action."* We have a couple of questions on these provisions. Could the Mayor of a County be designated as the *"governor's authorized representative"*? Also, item (c) (5) includes four (4) other items to assist agencies in determining the approving agency when multiple agencies may be involved. We assume the intent of the rules is that all five (5) provisions should be analyzed to determine which agency should be designated. We further assume that these provisions were meant to guide the agencies involved in determining the lead agency and that they should weigh each of the criteria equally in making the determination.

C. HAR 11-200A-9A, Applicability of Chapter 343 to Agency Actions

1. Item (a) 2 notes that while there is an exemption for feasibility and planning studies, if there is testing that will be done as part of the feasibility study which may have a significant impact on the environment, then an EA or EIS should be prepared. Is it assumed that the proposing agency would make the determination on whether the testing would have a significant impact?

D. HAR 11-200A-15A, General Types of Actions Eligible for Exemption

1. Item 11 allows for the construction of affordable housing to be considered exempt from Chapter 343, if the project can meet the four (4) criteria listed in this section including the use of state/county lands/funds, conforms with State Urban classification, consistent with county zoning and meets applicable federal, state and county development standards. We support this inclusion of affordable housing for exempt actions. We did want to confirm that should an affordable housing project utilize the provision of Hawai'i Revised Statutes (HRS) 201H, that this exemption would not apply. We would appreciate confirmation in this regard.

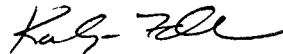
Scott Glenn, Director
November 27, 2017
Page 3

E. HAR 11-200A-20A, Public Review & Response Requirements for DEA for AFONSI and Addenda to Draft EA , 11-200A-23A Consultation prior to a Filing of Draft EIS, and 11-200A-25A, Public Review requirements for Draft EIS and Addenda

1. The sections noted above discuss the receipt of written comments received or postmarked to the proposing agency or approving agency and applicant for Draft EA, EISPN and Draft EIS. Would comments posted to a project's social media account (i.e., Facebook, Twitter), blogs, submitted via email or other electronic means that may not be developed at this point in time, qualify as "written comments" if they are received during the Draft EA/EISPN/Draft EIS comment period? Is there guidance that can be provided to proposing agencies and applicants in terms of how to treat such comments?

Thank you again for the opportunity to provide our input and suggestions. We appreciate the efforts to update the HAR. We look forward to continued involvement in the process and the review of the next draft. Should you have any questions on our comments and suggestions, please contact us at (808) 244-2015.

Very truly yours,



Karlynn Fukuda
Executive Vice President

KF:yp

K:\DATA\ADMIN\Legis 2\OEQC EIS Rule ver.3.doc



Auwahi Wind

November 27, 2017

Via E-Mail (oeqchawaii@doh.hawaii.gov) and U.S. Mail
Department of Health, State of Hawaii
State Environmental Council
Attention: Director Scott Glenn
235 South Beretania Street, Suite 702
Honolulu, Hawai'i 96813

Re: Comments on Proposed Revisions to HAR Chapter 11-200 - V 0.3

Dear Director Glenn and Members of the State Environmental Council:

We appreciate the opportunity to comment on the third version (V 0.3) preliminary draft of proposed revisions to the Hawai'i Administrative Rules Chapter 11-200 regarding procedures, content requirements, criteria, and definitions for implementing Hawai'i Revised Statutes Chapter 343. We previously submitted comments by letter dated September 29, 2017, regarding Version 0.2.

We were surprised and disappointed to see that unlike the first two versions of the proposed revisions, V 0.3 eliminated the new definition of "Substantial Commencement"¹ and deleted any reference to this concept in relation to the rules applicable to Supplemental EISs. Although our September comment letter made some suggestions to these sections, we believed the definition and use of this concept provided helpful clarification of ambiguities contained in the current rules regarding when preparation of a SEIR is appropriate in situations where actions were already underway or had been completed. There was no explanation in V 0.3 for why the prior proposed revisions to these sections were eliminated in this version.

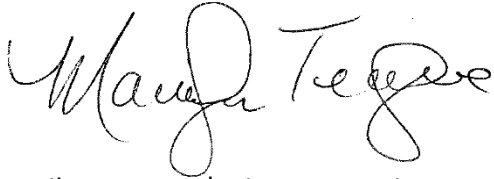
We suggest the Council consider incorporating the prior revisions into the current draft to include "Substantial Commencement" or a term like it for reference in the SEIS rules, or

¹ Please note that while the definition is eliminated, V 0.3 continues to use the term, in bold indicating that it is a defined term, in §11-200A-9A(a)(3)(B) Applicability of Chapter 343 to Agency Actions.

providing other clarification regarding whether and when preparing a SEIS is necessary in situations where a project has started construction or has been completed as envisioned in its Final EIS.

We again thank you for this opportunity to comment on the important work the Council is undertaking to update and clarify Chapter 11-200. Please feel free to call us if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink that reads "Marilyn Teague". The signature is written in a cursive, flowing style.

Marilyn Teague | Director, Environmental, Permitting, Compliance and Safety
Sempra Infrastructure, LLC | HQ-12N1 | 488 8th Ave | San Diego, CA 92101
office 619-696-4910 | MTeague@SempraGlobal.com

1065 Ahua Street
Honolulu, HI 96819
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Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Sent via E-mail: oeqchawaii@doh.hawaii.gov

November 27, 2017

Honorable Joseph Shacat, Chair
Environmental Council
State of Hawaii
235 S. Beretania Street, Suite 702
Honolulu, Hawaii 96813

**SUBJECT: COMMENTS REGARDING VERSION 3.0 ENVIRONMENTAL
COUNCIL DRAFT PROPOSED CHANGES TO HAWAII
ADMINISTRATIVE RULES TITLE 11, CHAPTER 200
REGARDING CHAPTER 343, HRS, ENVIRONMENTAL IMPACT
STATEMENTS.**

Dear Chair Shacat and Members of the Environmental Council,

My name is Shannon Alivado and on behalf of the General Contractors Association of Hawaii (GCA), I am writing with comments to the proposed amendments to the administrative rules governing Chapter 343 and Environmental Impact Statements. The GCA is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii whose mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest. GCA commends the Council for proposing these amendments to the rules and appreciates the opportunity to comment.

Upon review of the proposed changes to Hawaii Administrative Rules, Title 11, Chapter 200 (HAR 11-200) regarding Environmental Impact Statement Rules, GCA applauds the Council for attempting to address issues from recent court decisions. However, GCA has some concerns regarding some proposals that may create a more tenuous process in the disclosure of impacts to the environment. Additionally, GCA thanks the Council for the footnotes but some of the justifications provided do not provide sufficient information and background as to why the changes are being made, for example, most of the footnotes do not elaborate as to why additional definitions may be necessary. General statements in the footnotes provide no background to the public and further no justification for such changes. Also some of the proposed amendments are substantive in nature, which calls into question whether the rulemaking process is the proper process to carry out such a change.

Legislative guidance indicates that “[t]he purposes of administrative rulemaking are to implement legislation and to establish operating procedures for state agencies. Generally, a legislative act will provide the skeleton or superstructure for a program. Agencies are required to ‘fill in the details’ and implement the program on a day-to-day basis.” HAWAII ADMINISTRATIVE RULES DRAFTING MANUAL CH. 3 (2nd ed. 1984) (LEGISLATIVE REFERENCE BUREAU, STATE OF HAWAII).

GCA has the following comments for the Council to consider:

- 1) **Shelf Life Proposal**. GCA thanks the Council for reconsidering version 3.0 regarding shelf life which would preserve the ability for projects to continue as documented by project owners. Version 2.0 which proposed a presumptive shelf life of five years between the final EIS and the date of Substantial Commencement could significantly jeopardize a project, increase costs and risk the loss of financing for a project. As a result of the *Turtle Bay* Decision, Honolulu's Department of Planning and Permitting has implemented a well-documented process to determine whether a project has had any substantial changes to its scope and GCA would propose a process that would not hinder
- 2) **Increasing Council's time to respond to an Appeal from 30 days to as much as 90 days**. GCA question why an increase for the appeal period is necessary and whether this is following some guidance that is being initiated by certain special interest.
- 3) **Definition of program and project**. Background – Version 3 proposes a definition of program and project. The footnotes lack justification as to why such definition is necessary. While the recent *Umberger* Decision regarding gathering of aquarium fish and approvals by DLNR via permit may be the impetus for including such a definition, no such reference is made to this Decision. GCA requests further justification be provided for including such and an indication of how such a definition may impact future projects if such definitions are included. Would these definitions make more projects subject to an EA or EIS – in discussion at meetings, CIP projects and moving of fence posts were mentioned as potential triggers for such EA or EIS requirements? Is that the intent of these definitions?

GCA continues to review the proposed amendments and is working toward continuing to understand the impacts they may have on current and future proposed developments and thus reserves the ability to further comment on the proposed amendments. GCA understands the importance of protecting the environment and natural habitat and would like to work toward ensuring such protections are not made more complicated or counterproductive to its purpose.

Thank you for the opportunity to comment and we look forward to further review of any future drafts the Council may propose.

With regards,



Shannon Alivado
Director of Government Relations



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. Cherish the Earth.

To: Scott Glenn, Director
Office of Environmental Quality and Control, State of Hawai'i
235 South Beretania Street, Suite 702
Honolulu, Hawai'i 96813

Date: November 28, 2017

Re: Sierra Club Comments to the Environmental Council regarding proposed revisions to Hawai'i Administrative Rules Chapter 11-200 version 0.3

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i offers the following comments on version 0.3 of the proposed revisions to Hawai'i's environmental impact statement rules, Haw. Admin. Rules Ch. 11-200.

I. Accolades

We appreciate the Environmental Council's effort to address long-standing confusion in the implementation of HAR 11-200. This revision process has been extremely well managed, inclusive, and thoughtful. We would like to especially highlight the Council's revisions to improve meaningful participation in the environmental review process (HAR 11-200A-1A), specificity on the requirements for publication (HAR 11-200A-5A), and inclusion of cultural resources and practices in the significance criteria (HAR 11-200A-12A). Thank you very much for emphasizing the fundamental purpose of HRS §343 in the revision of these rules.

That said, we do have a few areas of concern and proposed revisions we find unacceptable.

II. Concerns

A. Applicability of Chapter 343 (HAR 11-200A-8A and 10A). This concept introduces new ambiguity into the regulations. Offering guidance on activities not triggering Chapter 343 is good, and will likely improve compliance and fulfillment of Chapter 343's purpose. However, HAR 11-200A-10A(b)(1) invites misunderstanding and confusion. We recommend removing that section, leaving only the specific examples of actions not triggering the statute.

B. Scoping. The definition of scoping is much improved. However, we would like to see scoping to be a requirement of the environmental review process. Scoping meetings are recognized as a best practice in planning and facilitation. Requiring this best practice ensures the quality of EIS processes.

C. Batching Comments (HAR 11-200A-26A(d)). Batching comments should not be allowed without strict and specific guidelines for what qualifies as similar comments. It is too easy for project proponents to improperly group comments for a single response as a method for obfuscating nuanced public concerns. Indeed, in the case of applicants, the financial incentive is to minimize the diversity of comments to the greatest extent possible. Strong regulations are the only tool to correct for that perverse incentive.

D. Guidance on mitigation measures. The proposed revisions do not address the growing popularity of “pay to degrade” arrangements, where project proponents provide financial support for ancillary activities to “mitigate” the significant impact anticipated by a project proposal. These regulations should make clear that a proposing agency or accepting agency may only consider mitigation measures that directly reduce the significant impact anticipated by the project, e.g. create new habitat to off-set habitat that will be lost due to a project.

III. Unacceptable revisions

A. Emergency actions (11-200A-9A(c)). In the age of climate disruption, emergency actions will be increasingly common. Sea level rise will result in sudden shoreline erosion, and saltwater inundation. Warmer seas will trigger more frequent and severe storms.

Recognizing that emergency-like conditions will be more common in the near future, it is dangerous to allow agency or applicant actions to be exempt from environmental review even where an emergency proclamation has not been issued. These actions could cause irreparable harm to natural and cultural resources, public health, and the livability of our communities.

We strongly urge the Council to remove subsection (c) from the proposed revisions. If it is retained, then far more stringent controls, oversight, documentation of effects must be required.

B. Affordable Housing Exemption (HAR11-200A-15A(c)(11)). We recognize that Hawai'i is suffering a housing crisis. More affordable housing must be built to ensure that everyone in Hawai'i has a decent place to live. This mandate, however, does not justify total circumvention of the laws designed to ensure a high-quality of living for all of Hawai'i's people. Compliance with Chapter 343 is as much about protecting natural and cultural resources as it is about ensuring livable communities, good urban design, satisfaction of minimum infrastructure needs, and thoughtful traffic management. Affordable housing projects have the potential to significantly affect the quality of life for residents of the proposed project, as well as the surrounding community.

We strongly urge the Council to remove this exemption. Everyone, including Hawai'i's working families, deserve well-planned communities with adequate sewers, roads, parking, parks, and schools. Well-planned communities are more likely to be achieved through a thorough environmental review process.

If the Council insists on including an exemption for affordable housing projects, then in addition to the provisos already stated in the proposed revisions, we strongly urge the Council to:

- a) specifically define “affordable housing project”. As it is now, depending on the agency statute at issue, a project proposing a 80% market-rate housing and 20% “workforce housing” could be exempted from environmental review. To protect against abuse of this exemption, the Council should specifically define the term affordable housing.
- b) modify the language of subsection 11(B) and (C) to make clear that exemptions are prohibited where a variance of any kind is issued from the state land use boundaries,

county zoning classifications, special design districts, or any other building code or land use ordinance.

- c) require strict compliance with the county plan of the respective county where the project is proposed. Doing so gives the counties the opportunity to encourage where affordable housing is built.
- d) require a programmatic environmental assessment for the geographic area where the affordable housing project seeking exemption is proposed. Exemptions for affordable housing projects should be considered only where the proposed project satisfies the parameters of the programmatic EA and the programmatic EA concluded with a finding of no significant impact.

Thank you for the opportunity to provide our comments on version 0.3 of the proposed revisions to HAR 11-200. We look forward to continuing this conversation with the Council.

1 Working Draft Version 0.3
2 Proposed Revisions to Hawai'i Administrative Rules
3 Title 11 Department of Health
4 Chapter 200 Environmental Impact Statement Rules
5 **October 31, 2017**

6
7 Version 0.3 is a proposed revision and reorganization of Hawai'i Administrative Rules (HAR) Title
8 11 Department of Health, Chapter 200 Environmental Impact Statements ("HAR Chapter 11-
9 200") incorporating feedback from the Environmental Council (EC), agencies, and the public.

10
11 The EC anticipates preparing a Version 0.4 in November 2017 that could potentially become the
12 proposed draft for which the EC conducts formal public hearings to adopt into rules.

13
14 The EC requests feedback on Version 0.3 proposed changes as they relate to the reorganization
15 and how to make the process work better as a whole, especially with respect to proposed policy
16 direction and wording. While feedback on typos, incorrect underlining, bolding, highlighting, or
17 section references, and other inadvertent errors are appreciated, these matters are addressed
18 when preparation of the next draft occurs.

19 Background

20 The current HAR Chapter 11-200 rules were promulgated and compiled in 1996. An amendment
21 to add an exemption class for the acquisition of land for affordable housing was added in 2007,
22 although it has not been compiled with the rest of the rules.

23
24 On July 27, 2017, the EC Permitted Interaction Group submitted Version 0.1 to the EC for its
25 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional
26 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline
27 document and to serve as a foundation for consulting with affected agencies and the public. The
28 EC approval concluded the work of the Permitted Interaction Group.

29
30 Version 0.2 was introduced to the EC on September 5, 2017 as a discussion document that
31 incorporated public comment and the comments of Council members. The Council closed
32 comments on Version 0.2 on October 20, 2017.

33
34 Version 0.3 makes multiple changes based on agency and public comment and Council member
35 input on Version 0.2. Most notably, Version 0.3 reorganizes, adds, and deletes sections to HAR
36 Chapter 11-200 to create the proposed HAR Chapter 11-200A. The purpose of the
37 reorganization is to ensure that the structure of the rules more closely follows the sequence of
38 steps in the environmental review process. Version 0.3 is intended to be a discussion document.

#001

Posted by **Debra Holvick** on **11/08/2017** at **4:34pm**

Question

There needs to be more independence between the client and the company hired to do the EIS. In Maui, Lowe Development has hired Munekiiyo Hiraga to write the EIS and it is obvious from the EISPN that they are blatantly biased towards the developer that hired the firm. They attend meetings together (including before the ERS pension fund land owners) to promote the development. They don't even try to hide their relationship. For example, throughout the EISPN, they refer to the redevelopment numerous times as a "revitalization" which it is not. It is actually a "devitalization". How can we trust the EIS when they are hired to be on the side of the developer. It isn't the best solution, but perhaps the County should hire an INDEPENDENT firm, maybe even from a different island or the mainland, to write the EIS. Then, the developer can reimburse the county. The way it is now, we can just throw the EIS in the garbage can. It is meaningless.

What is being done, if anything, to remedy the situation?

Agree: 0, Disagree: 0

#002

Posted by **kyle brockett** on **11/15/2017** at **10:52am**

Comment

Why is Ulopono trying so hard to go against the people by changing the laws of the state. They have and will try anything including lying to get their way. Please let the people voice their opinion. Thanks

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 How to Read Version 0.3

2 Because Version 0.3 reorganizes the subchapters and sections, confusion could arise when
3 referencing subchapters and sections. To ease discussion of differences between the 1996 rules
4 and changes proposed in Version 0.3, Version 0.3 calls the rules “HAR Chapter 11-200A” and
5 appends an “A” to the end of each subchapter and section number. A reference to a section
6 number without using “A” is understood to be a reference to the 1996 rules.

7
8 For example, Section 3 in the 1996 rules is about the periodic bulletin, while in Version 0.3
9 Section 3A is about the computation of time. What was Section 3 (1996) has been moved to
10 Subchapter 4A Filing and Publication in the Periodic Bulletin and the content that was in Section
11 3 (1996) has been divided into three sections: 4A, 5A, and 6A.

12
13 Version 0.3 does not carry forward all proposed additions and deletions considered in Versions
14 0.1 and 0.2. Rather, Version 0.3 only shows changes with respect to the existing 1996 rules and
15 2007 amendment for consideration in this working draft.

16
17 While Versions 0.1 and 0.2 used a “Ramseyer-like” style of formatting to indicate proposed
18 changes to HAR Chapter 11-200, Version 0.3 adheres more closely to the Ramseyer style
19 format that the Legislative Reference Bureau recommends, while adapting the style for the
20 purposes of a discussion document and to enhance readability.

- 21 • Defined terms are bolded throughout the text to draw the reader’s attention to the fact
22 that the term has a particular meaning within the context of the proposed rules.
- 23 • Bullets shaded in gray follow each subchapter heading to provide a brief overview of the
24 structure of the subchapter to orient the reader.
- 25 • Footnotes accompanying each section title explain whether the section correlates to an
26 existing section in the 1996 rules or is a new section and how the original language from
27 the 1996 rules is treated in that section.
- 28 • Footnotes within the text provide explanations and context for understanding proposed
29 changes. Due to space limitations, explanations are brief and to the main point; they may
30 not describe every aspect of a proposed change in full.
- 31 • Per Ramseyer style, underlining indicates language that is moved between sections
32 (i.e., 1996 language from a section other than the one that the proposed section
33 correlates to) and new language introduced in Version 0.3.
- 34 • Highlighting, in addition to underlining, distinguishes new language introduced in Version
35 0.3 from 1996 rules language that has been moved.
- 36 • Per Ramseyer style, deletions of 1996 rules language are bracketed and struck-through.
- 37 • Deletions of language that was newly inserted in versions 0.1 or 0.2 of the Council’s
38 proposed rules working drafts have been completely removed to present a clean
39 document that captures the language retained to-date in the working drafts. In some
40 cases, the new language in Version 0.3 may be identical or revised language considered
41 in Version 0.1 or Version 0.2 and carried forward into Version 0.3.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 • The use of acronyms and abbreviations has been reduced, except for:
- 2 ○ EA: Environmental Assessment
- 3 ○ EIS: Environmental Impact Statement
- 4 ○ EISPN: Environmental Impact Statement Preparation Notice
- 5 ○ FONSI: Finding of No Significant Impact
- 6 ○ HAR: Hawaii Administrative Rules
- 7 ○ HRS: Hawaii Revised Statutes
- 8 ○ NEPA: National Environmental Policy Act
- 9 Understanding these acronyms and abbreviations is integral to meaningfully participating
- 10 in the environmental review process. As such, they are retained in this working draft.

11 **Examples of Formatting**

Original 1996 rules language that is in a proposed section that correlates with an existing 1996 rules section.	The original 1996 language looks like this without any formatting.
Original 1996 rules language moved from a section of the 1996 rules that does not specifically correlate with the section it is now in, or is part of a new proposed section combining provisions from existing sections of the 1996 rules. This is referred to as “moved” language.	<u>Moved original 1996 language looks like this.</u>
New language in Version 0.3 of the council’s proposed rules working drafts.	<u>New language from Version 0.3 is underlined and highlighted in a light orange.</u>
1996 rules language that is proposed to be deleted is bracketed and struck-through.	1996 rules language that is to be deleted [looks like this].
Example #1: 1996 rules language that includes defined terms (“agencies”, “persons”, “environmental assessments”, “environmental impact statements”), proposed language to be deleted (“of”), and new language (“(EAs)”, “(EISs)”).	The purpose of this chapter is to provide agencies and persons with procedures, specifications [of] <u>regarding the</u> contents of environmental assessments (EAs) and environmental impact statements (EISs) , and criteria and definitions of statewide application.
Example #2: Moved 1996 rules language that includes a defined term (“office”), proposed words to be deleted (“agency” and “section 11-200-3”) and new language inserted (“and the rationale” and “this subchapter”).	The office shall publish notice of [agency] withdrawals <u>and the rationale</u> in accordance with [section 11-200-3] <u>this subchapter.</u>

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Index of Version 0.3 and HAR 1996 Sections**

2 This table shows where sections from the 1996 rules appear in the proposed sections for Version
 3 0.3. In general, almost every section includes new and moved 1996 language. The HAR 1996
 4 sections cited below are the primary sources for the corresponding Version 0.3 section. "New"
 5 indicates that the section is almost entirely new or incorporate important points from a HAR 1996
 6 section.

7

Version 0.3 HAR Chapter 11-200A	HAR 1996 Section
Subchapter 1A Purpose	
§11-200A-1A Purpose	1, 14, 19 ⁰⁰³
Subchapter 2A Definitions and Terminology	
§11-200A-2A Definitions and Terminology	2
Subchapter 3A Computation of Time	
§11-200A-3A Computation of Time (new)	New
Subchapter 4A Filing and Publication in the Periodic Bulletin	
§11-200A-4A Periodic Bulletin	3, 11.2, 21, 27
§11-200A-5A Filing Requirements for Publication and Withdrawal	3, 9, 10, 11.1, 11.2, 20, 23
§11-200A-6A Republication of Notices, Documents, and Determinations	New
Subchapter 5A Responsibilities	
§11-200A-7A Identification of Approving Agency and Accepting Authority	3, 4, 23
Subchapter 6A Applicability	
§11-200A-8A General Applicability	New, 8
§11-200A-9A Applicability of Chapter 343 to Agency Actions	New, 5, 8
§11-200A-10A Applicability of Chapter 343 to Applicant Actions	New, 5, 6
§11-200A-11A Multiple or Phased Actions	7
Subchapter 7A Determination of Significance	
§11-200A-12A Significance Criteria	12
§11-200A-13A Determination of Level of Environmental Review	New, 5, 8
§11-200A-14A Consideration of Previous Determinations and Accepted Statements	13
Subchapter 8A Exempt Actions, List, and Notice Requirements	
§11-200A-15A General Types of Actions Eligible for Exemption	8
§11-200A-16A Exemption Lists	8
§11-200A-17A Exemption Notices	8

#003

Posted by **Gene Dashiell** on **11/02/2017** at **4:23pm**

Question

Is it possible to make these page numbers link/jump to the page(s)? Doing so would simplify our reviews.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

Version 0.3 HAR Chapter 11-200A	HAR 1996 Section
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§11-200A-18A Preparation and Contents of a Draft Environmental Assessment	9, 10, 19
§11-200A-19A Notice of Determination for Draft Environmental Assessments	11.1
§11-200A-20A Public Review & Response Requirements for Draft Environmental Assessments for Findings of No Significant Impact & Addenda to Draft Environmental Assessments	9.1
§11-200A-21A Contents of a Final Environmental Assessment	10
§11-200A-22A Notice of Determination for Final Environmental Assessments	9, 11.2
Subchapter 10A Environmental Impact Statements	
§11-200A-23A Consultation Prior to Filing a Draft Environmental Impact Statement	9, 15
§11-200A-24A Content Requirements; Draft Environmental Impact Statement	16, 17, 19, 22
§11-200A-25A Public Review Requirements for Draft Environmental Impact Statements and Addenda	22
§11-200A-26A Comment Response Requirements for Draft Environmental Impact Statements	22
§11-200A-27A Content Requirements; Final Environmental Impact Statement	16, 17, 18
§11-200A-28A Acceptability	23
Subchapter 11A Appeals	
§11-200A-29A Appeals to the Council	24
Subchapter 12A National Environmental Policy Act	
§11-200A-30A National Environmental Policy Act Actions: Applicability to Chapter 343, HRS	25, New
Subchapter 13A Supplemental Environmental Impact Statements	
§11-200A-31A Supplemental Environmental Impact Statements	26, 27, 28, 29
Subchapter 14A Retroactivity and Severability	
§11-200A-32A Retroactivity	New
§11-200A-33A Severability	30

1
2

#004

Posted by **Felicia Cowden** on **10/30/2017** at **3:10pm**

Comment

Aloha Environmental Council,

Reviewing V3 of the Hawaii Administrative Rules Update on the Chapter 11-200 released the night before the public comment deadline, the amendment violates the spirit of HRS chapter 343 on Environmental Impact Statements. HRS 343 is intended to protect not only the environment but more importantly the democratic process.

This is an egregious example of powerful industry players writing the rules for the regulators to exonerate themselves from the required accountability. The Hawaii Environmental Policy Act is intended to protect the land from exploitation and damage.

Group 70 has demonstrated their clear disregard for Environmental Assessments and Cultural Impact Surveys this year. I was at district court when Hawaii Dairy Farms was informed their Final Environment Impact Statement (FEIS) was deficient. Rather than comply with HEPA in conducting their Environment Impact Statement (EIS), they are now actively trying to change the very regulations that they failed to comply with. specifically, they want to eliminate the developer's requirement to answer each public comment filed in response to a draft EIS. The Environmental Council (EC) Draft Version .3 adopts the Ulupono/Group 70 recommendation that a developer be allowed to batch the comments and frame one response to the batch without needing to address/respond to each comment which is now the law.

The Department of Health found the Hawaii Dairy Farms insufficient in their requirements, as well. In the court room, the Hawaii Department of Health testified that they only process the required paperwork rather than research, monitor or enforce those requirements. The judge rescinded all of the permits.

The dairy in O`okala is a clear example of the failure to regulate or enforce environmental policies.

This administrative rule change shifts the benefit to the corporate interests that have a proven track record of recklessness. Do not erode the protections of the law and allow one response to batched inquiries. The citizen efforts to protect the environment have no direct financial reward to the people, but a lot of costs. This is an unfair swing to benefit offending exploitative business ventures.

As a pubic affairs programmer for community radio, I have regular exposure to controversial projects in the islands in which the rules and regulations already throw the balance of power toward the powerful. Don't make it worse.

Felicia Cowden

Kilauea, Kauai

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 Major Topics Addressed in Version 0.3

2 Version 0.3 reorganizes the 1996 rules almost entirely and proposes changes affecting almost
3 every section of the 1996 rules. In addition to the reorganization and numerous revisions to
4 modernize grammar and enhance readability (“housekeeping”), the following major topics are
5 addressed in Version 0.3:

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

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 1A Purpose**

- 2
- 3
- 4
- 5
- Expresses the purpose of HAR Chapter 11-200A⁰⁰⁶
 - Consolidates policy statements about conducting EISs into this section and reframes the policy statements to be about the environmental review process, and includes direction on consultation.

6 **§ 11-200A-1A Purpose¹**

7 (a) Chapter 343, Hawaii Revised Statutes, (HRS)², establishes a system of environmental
8 review at the state and county levels ~~[which]~~ that³ shall ensure that environmental
9 concerns are given appropriate consideration in decision making along with economic
10 and technical considerations. The purpose of this chapter is to provide **agencies** and
11 **persons** with procedures, specifications ~~[of]~~ regarding the⁴ contents of **environmental**
12 **assessments (EAs)**⁵ and **environmental impact statements (EISs)**⁶, and criteria and
13 definitions of statewide application.

14

15 (b) ~~[An EIS]~~ **EAs and EISs** ~~[is]~~ are meaningless without the conscientious application of the
16 ~~[EIS]~~ **environmental review** process as a whole, and shall not be merely a self-serving
17 **recitation of benefits and a rationalization of the proposed action. Agencies and**
18 **applicants** shall ensure that ~~[statements]~~ **EAs and EISs** are prepared at the earliest
19 opportunity in the planning and decision-making process. This shall assure an early open
20 forum for discussion of adverse **effects** and available alternatives, and that the decision-⁰⁰⁵
21 makers will be enlightened to any environmental consequences of the proposed **action**
22 prior to decision making⁰⁰⁷

23

24

¹ Formerly § 11-200-1, HAR (1996). All language in this section comes from section 11-200-1, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

² Housekeeping.

³ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

⁴ Increases clarity.

⁵ Provides acronym for environmental assessment.

⁶ Provides acronym for environmental impact statements.

⁷ Emphasizes that the environmental review process is to occur before committing to a course of action.

⁸ Modified and moved from existing 1996 HAR chapter 11-200 rules language in section 11-200-14, HAR (1996) to emphasize that the full environmental review process should be conscientiously applied to be meaningful. The original language was specific to EISs but is also relevant for EAs.

#005

Posted by **Choon James** on **10/30/2017** at **5:01am**

Comment

I have seen high-school level EA completed and APPROVED with NO ALTERNATIVES when there are other superior alternatives.

Chapter 343 that encourages consultants/agencies to take advantage of local knowledge and wisdom is wonderful but it cannot be implemented unless the consultant is really willing to listen and change. I have not seen this happen. What I have seen is the powers-that-be push the process through at all costs, including fighting in court hoping the judicial system will defer to the legislative government.

Agree: 0, Disagree: 0

#006

Posted by **Choon James** on **10/30/2017** at **4:51am**

Comment

Companies and individuals who prepare the EA or the EIS should be require to adhere to a standard profession ethics and requisites like other professional organizations.

At this point, there is no certification or continuing education or Code of Ethics for this field. Additionally, this process begins on shaky foundation when it is the project owner who hires the EA or EIS order. What person would bite off the hands that feed them?

Based on my experiences, Agencies routinely rubber-stamp the process. In cases where a conscientious employee may make a comment, the consultant would usually mitigate or ignore the concern through the magic wand of a wordsmith.

Agree: 0, Disagree: 0

#007

Posted by **Choon James** on **10/30/2017** at **5:10am**

Comment

The consultant or the agency has to be more public friendly. It's ridiculous to think that the most affected public would know where to find this information. It's particularly true for projects in low-income communities.

Which person check through the small hidden classifieds in newspaper, even if the person subscribes to the newspaper.

Community associations and neighborhood boards often times do not understand the significance and timeliness of the EA or EIS.

Even the mainstream attorneys do not know the requisites of EA or EIS or even what the OEQC is.

This is why it is important for government agencies to require that their EA/EIS contact the most affected people with 1000 feet and at least 45 days PRIOR through mail or flyers in the communities besides the status quo procedures. IT should also provide a brief summary of the rights and privileges

and timelines to the public.

Agree: 0, Disagree: 0

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

008

- 1 (c) In preparing any document, proposing agencies and applicants shall:⁹
- 2 (1) [make] Make every effort to convey the required information succinctly in a form
- 3 easily understood, both by members of the public and by government decision-
- 4 makers, giving attention to the substance of the information conveyed rather than
- 5 to the particular form, or length, of the document;¹⁰
- 6 (2) [care shall be taken] Take care to concentrate on important issues and to ensure
- 7 that the document remains an essentially self-contained document, capable of
- 8 being understood by the reader without the need for undue cross-reference;¹¹ and
- 9 (3) Conduct any required consultation as mutual, open and direct, two-way
- 10 communication, in good faith, to secure the meaningful participation of agencies
- 11 and the public in the environmental review process.¹²
- 12
- 13 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-1, 343-6)
- 14

⁹ Modifies language from § 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

¹⁰ Source: § 11-200-19(c), HAR (1996). Modifies language from section 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

¹¹ Source: § 11-200-19(c), HAR (1996). Modifies language from section 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

¹² Clarifies the spirit in which consultation should be engaged in to address comments that the word “consult” has previously been construed as solely providing information regarding a proposed action without allowing opportunity for response.

#008

Posted by **Choon James** on **10/30/2017** at **4:37am**

Comment

Consultant shall hold at least one public hearing for the most affected people in the affected community. Letters shall be sent to the affected people within 1000 feet of the proposed project at 45 days PRIOR. Or the nearest adjacent properties within 1000 of the property's boundaries (for farm land acreages.)

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 2A Definitions and Terminology**

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- Sets definitions and terms used in HAR Chapter 11-200A.
 - Introduces new terms for “EIS public scoping meeting”, “Exemption list”, “Project”, “Program”, “Proposing agency”, and “Trigger”.
 - Deletes the terms “Exempt classes of action” and “Environmental impact”.
 - Amends various definitions to remove process steps, clarify meaning, or make more consistent with proposed changes.
 - Moves definitions into alphabetical order based on revisions to their wording.
 - Directs agencies to use their own statutes and rules when a term is not defined in this chapter or HRS Chapter 343.

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

12 As used in this chapter:

13

14 "**Acceptance**" means a formal determination [of acceptability]¹³ that the document required to be
 15 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an **environmental**
 16 **impact statement (EIS)**,¹⁴ [adequately describes identifiable environmental impacts, and
 17 satisfactorily responds to comments received during the review of the statement] **as prescribed**
 18 **by section 11-200A-28A**,¹⁵ **Acceptance** does not mean that the **action** is environmentally sound
 19 or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A
 20 determination of **acceptance** is required prior to implementing or approving the **action**.

21

22 "**Accepting authority**" means the [final]¹⁶ official **who**,¹⁷ or **agency** that, [determines the
 23 acceptability of the EIS document] **makes the determination that a final EIS is required to be**
 24 **filed, pursuant to chapter 343, HRS, and that the final EIS fulfills the definitions and requirements**
 25 **of an EIS**¹⁸.

26

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

28

29 "**Addendum**" means an attachment to a **draft** [environmental assessment] **EA**¹⁹ or draft
 30 [environmental impact statement] **EIS**²⁰, prepared at the discretion of the **proposing agency**, [or]

¹³ Housekeeping. Removes redundant language.

¹⁴ Housekeeping.

¹⁵ 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.

¹⁶ Removes “final” because it does not contribute additional meaning to the definition.

¹⁷ Housekeeping.

¹⁸ Clarifies that the role of the accepting authority is to determine the acceptability of a final EIS.

¹⁹ 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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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 **applicant, or**²¹ **approving agency**, and distinct from a **supplemental EIS** [statement]²², for the
 2 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,
 3 or clarifications to information already contained in the **draft** [environmental assessment] **EA**²³ or
 4 the draft [environmental impact statement] **EIS** already filed with the **office**.

5
 6 "**Agency**" means any department, office, board, or commission of the state or county
 7 government [which] **that** is part of the executive branch of that government.

8
 9 "**Applicant**" means any **person** [who] **that**²⁴, pursuant to statute, ordinance, or rule, officially
 10 requests **approval** from an **agency** for a proposed **action**.

11
 12 "**Approval**" means a **discretionary consent** required from an **agency** prior to [actual]²⁵
 13 implementation of an **action**. [~~Discretionary consent means a consent, sanction, or~~
 14 ~~recommendation from an agency for which judgment and free will may be exercised by the~~
 15 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~
 16 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~
 17 ~~by law or rule without the use of judgment or discretion.]²⁶~~

18
 19 "**Approving agency**" means an **agency** that issues an **approval** prior to [actual]²⁷
 20 implementation of an **applicant**²⁸ **action**.

21
 22 "**Council**" [or "**EC**"]²⁹ means the environmental **council**.

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

²⁰ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

²¹ Clarifies that an applicant may also choose to prepare an addendum where necessary.

²² Removes redundant language. An EIS is by definition a statement.

²³ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

²⁴ Stylistic change because a "person" as defined by the rules is not always a human.

²⁵ Removes unnecessary word.

²⁶ Removes "discretionary consent" from the definition and makes it a standalone definition that mirrors the chapter 343, HRS.

²⁷ Removes unnecessary word.

²⁸ Approving agencies are only in the case of applicants because chapter 343, HRS environmental review only applies to applicants when an applicant action needs a discretionary consent (an approval) to proceed and contains a trigger under section 343-5, HRS.

²⁹ Removes unnecessary acronym from the rules. The Environmental Council will be referred to as the Council or the Environmental Council only.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1
2 **"Discretionary consent"** means a consent, sanction, or recommendation from an **agency** for
3 which judgment and free will may be exercised by the issuing **agency**, as distinguished from a
4 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an
5 **agency** upon a given set of facts, as prescribed by law without the use of judgment or
6 discretion.³⁰

7
8 **"Draft environmental assessment"** means the [environmental assessment] **EA** submitted by a
9 **proposing agency** or an **approving agency** for public review and comment when that **agency**
10 anticipates a [negative declaration] **finding of no significant impact (FONSI)**³¹ [determination].

11
12 **"Effects"** or **"impacts"** as used in this chapter are synonymous. **Effects** may include ecological
13 **effects** (such as the **effects** on natural resources and on the components, structures, and
14 functioning of affected ecosystems), aesthetic **effects**, historic **effects**, cultural **effects**,
15 economic **effects**, social **effects**, or health **effects**, whether **primary**, **secondary**, or
16 **cumulative, immediate or delayed**³². **Effects** may also include those **effects** resulting from
17 **actions** [which] that may have both beneficial and detrimental **effects**, even if on balance the
18 **agency** believes that the **effect** will be beneficial.

19
20 **"EIS preparation notice"**³³ [or] **"EISPN"**³⁴, or **"preparation notice"** means a determination
21 [based on an environmental assessment that the subject] that an³⁵ **action** may have a
22 **significant effect** on the **environment** and, therefore, will require the preparation of an
23 [environmental impact statement] **EIS**, based on either an **EA** or an **agency's** judgment and
24 experience that the proposed **action** may have a **significant effect** on the **environment**.^{36/37}

25
26 **"EIS public scoping meeting"** means a meeting in which **agencies**, citizen groups, and the
27 general public are notified of the opportunity to assist the **proposing agency** or **applicant** in
28 determining the range of **actions**, alternatives, **impacts**, and proposed mitigation measures to
29 be considered in the draft **EIS** and the **significant** issues to be analyzed in depth in the draft
30 **EIS**."³⁸

³⁰ Definition removed from "approval" and made standalone. Mirrors section 343-2, HRS, language and expands on ministerial definition (which was existing language in section 11-200-2, HAR (1996)).

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

³² Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

³³ Housekeeping.

³⁴ Adds common acronym for use throughout the rules.

³⁵ Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

³⁶ Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency's judgment and experience. See chapter 343-5(e), HRS.

³⁷ Moved under "E" because "EISPN" is used more frequently than "preparation notice".

³⁸ Adds definition for EIS public scoping meeting required under section 11-200A-23A.

#009

Posted by **Linda M. B. Paul** on **11/26/2017** at **6:00pm**

add "or an applicant's " judgment

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 **"Emergency action"** means an **action** to prevent or mitigate loss or damage to life, health,
 2 property, or essential public services in response to a sudden unexpected occurrence
 3 demanding such immediate **action**.

4
 5 **"Environment"** means humanity's surroundings, inclusive of all the physical, economic, cultural,
 6 and social conditions that exist within the area affected by a proposed **action**, including land,
 7 human and animal communities, **health**,³⁹ air, water, minerals, flora, fauna, ambient noise, and
 8 objects of historic, **cultural**,⁴⁰ or aesthetic significance.

9
 10 **"Environmental assessment"** or **"EA"**⁴¹ means a written evaluation [~~to determine whether an~~
 11 ~~action may have a significant environmental effect]~~ **that serves to provide sufficient evidence and**
 12 **analysis to determine whether an action may have a significant effect.**⁴²

13
 14 [~~"Environmental impact" means an effect of any kind, whether immediate or delayed, on any~~
 15 ~~component of the environment.]⁴³~~

16
 17 **"Environmental impact statement," "statement,"** or **"EIS"** means an informational document
 18 prepared in compliance with chapter 343, HRS[~~, and this chapter and which fully complies with~~
 19 ~~subchapter 7 of this chapter]~~⁴⁴. The initial [statement] **EIS**⁴⁵ filed for public review shall be
 20 referred to as the draft [environmental impact statement] **EIS** and shall be distinguished from the
 21 final [environmental impact statement] **EIS**, which is the document that has incorporated the
 22 public's comments and the responses to those comments. The final [environmental impact
 23 statement] **EIS** is the document that shall be evaluated for acceptability by the [~~respective~~]⁴⁶
 24 **accepting authority**.

25
 26 [~~"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to~~
 27 ~~prepare environmental assessments, for a class of actions, based on a determination by the~~
 28 ~~proposing agency or approving agency that the class of actions will probably have a minimal or~~
 29 ~~no significant effect on the environment.]⁴⁷~~

³⁹ Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".

⁴⁰ Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).

⁴¹ Adds common abbreviation for use throughout the rules.

⁴² 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.

⁴³ Deletes and merges definition with "effects"/ "impacts" definition.

⁴⁴ Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

⁴⁵ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

⁴⁶ Removes unnecessary language.

⁴⁷ Removes the definition because the concept of "classes of actions" is removed in subchapter 8A. Subchapter 8A uses "general types" instead of "classes of actions" to be consistent with chapter 343, HRS.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 **“Exemption list”** means a list prepared by an **agency** pursuant to subchapter 8A of the types of
 2 **actions** the **agency** finds fit into the general types of **action** enumerated in section 11-200A-15A
 3 and that subject to the conditions of this chapter and chapter 343, HRS may be exempt from
 4 preparation of an **EA**.⁴⁸

5
 6 **“Exemption notice”** means a ~~brief notice kept on file by the proposing agency, in the case of a~~
 7 ~~public action, or the agency with the power of approval, in the case of a private action, when it~~
 8 ~~has determined that the proposed project is an exempt or emergency project] notice produced in~~
 9 accordance with subchapter 8A for an **action** that a **proposing agency** or **approving agency**
 10 on behalf of an **applicant** determines to be exempt from preparation of an **EA**.⁴⁹

11
 12 **“Final environmental assessment”** means either the ~~environmental assessment] EA~~ submitted
 13 by a **proposing agency** or an **approving agency** following the public review and comment
 14 period for the **draft** ~~environmental assessment] EA~~ and in support of either a **FONSI** or [a
 15 preparation notice] **an EISPN**⁵⁰; ~~determination; or the environmental assessment submitted by a~~
 16 ~~proposing agency or an approving agency subject to a public consultation period when such an~~
 17 ~~agency clearly determines at the outset that the proposed action may have a significant effect~~
 18 ~~and hence will require the preparation of a statement.]⁵¹~~

19
 20 **“Finding of no significant impact”** or **“FONSI”** means a determination by an **agency** based on
 21 **an EA** that an **action** not otherwise exempt will not have a **significant effect** on the
 22 **environment** and therefore does not require the preparation of an **EIS**. A **FONSI** is required prior
 23 to implementing or approving the **action**.⁵²

24
 25 **“Impacts”** means the same as **“effects”**.⁵³

26
 27 **“Issue date”** means the date imprinted on the **periodic bulletin** required by section 343-3, HRS.

28
 29 **“National Environmental Policy Act”** or **“NEPA”**⁵⁴ means the **National Environmental Policy**
 30 **Act** of 1969, Public Law 91-190, 42 U.S.C. [§] **sections** 4321-4347, as amended.

31

⁴⁸ Provides definition for exemption list.

⁴⁹ Revises the language to be a document prepared by following the requirements of subchapter 8A.

⁵⁰ Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

⁵¹ Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency’s judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.

⁵² Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.

⁵³ Adds a reference for anyone looking up the word “impacts” to direct them to the word “effects”.

⁵⁴ Adds common acronym for use throughout the rules.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 ~~["Negative declaration" or "finding of no significant impact" means a determination by an agency~~
 2 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~
 3 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~
 4 ~~A negative declaration is required prior to implementing or approving the action.]⁵⁵~~

5
 6 **"Office"** means the **Office of Environmental Quality Control**.⁵⁶

7
 8 **"Periodic bulletin"** or **"bulletin"** means the document required by section 343-3, HRS, and
 9 published by the **office**.

10
 11 **"Person"** includes any individual, partnership, firm, association, trust, estate, private corporation,
 12 or other legal entity other than an **agency**.

13
 14 ~~["Preparation notice" or "EIS preparation notice" means a determination based on an~~
 15 ~~environmental assessment that the subject action may have a significant effect on the~~
 16 ~~environment and, therefore, will require the preparation of an environmental impact statement.]⁵⁷~~

17
 18 **"Primary impact;"** or **"primary effect;"** or **"direct impact;"**⁵⁸ or **"direct effect"** means **effects**
 19 ~~[which] **that**~~ are caused by the **action** and occur at the same time and place.

20
 21 **"Project"** means a discrete, planned undertaking that has a defined beginning and end time, is
 22 **site specific, and has a specific goal or purpose.**⁵⁹

23
 24 **"Program"** means a series of one or more **projects** to be carried out concurrently or in phases
 25 **within a general timeline, that may include multiple sites or geographic areas, and is undertaken**
 26 **for a broad goal or purpose. A program may include: a number of separate projects in a given**
 27 **geographic area which, if considered singly, may have minor impacts, but if considered together**
 28 **may have significant impacts; separate projects having generic or common impacts; an entire**
 29 **plan having wide application or restricting the range of future alternative policies or actions,**
 30 **including new significant changes to existing land use plans, development plans, zoning**
 31 **regulations, or agency comprehensive resource management plans; implementation of a single**
 32 **project or multiple projects over a long timeframe; or implementation of a single project over a**
 33 **large geographic area.**⁶⁰

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

56 Housekeeping.

57 Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".

58 Housekeeping.

59 Adds a definition for "project" to provide greater clarity about what activities rise to being a "project" and therefore an "action" requiring environmental review.

60 Adds a definition for "program" to provide greater clarity about what activities rise to being a "program" and therefore an "action" requiring environmental review.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 **"Proposing agency"** means any state or county **agency** that proposes an **action** under chapter
2 **343, HRS.**⁶¹

3
4 **"Secondary impact[~~]~~"** [~~or~~] **"secondary effect[~~]~~"** [~~or~~] **"indirect impact[~~]~~"** or **"indirect effect"**
5 means **an** [effects] **effect** [which] **that** [are] **is** caused by the **action** and [are] **is** later in time or
6 farther removed in distance, but [are] **is** still reasonably foreseeable.⁶² [~~Indirect~~] **An indirect**
7 [effects] **effect** may include **a** growth-inducing [effects] **effect**⁶³ and other **effects** related to
8 induced changes in the pattern of land use, population density or growth rate, and related
9 **effects** on air, [~~and~~] water,⁶⁴ and other natural systems, including ecosystems.

10
11 **"Significant effect"** or **"significant impact"** means the sum of **effects** on the quality of the
12 **environment**, including **actions** that irrevocably commit a natural resource, curtail the range of
13 beneficial uses of the **environment**, are contrary to the [~~state's~~] **State's**⁶⁵ environmental policies
14 or long-term environmental goals and guidelines as established by law, [~~or~~]⁶⁶ adversely affect the **economic**
15 **welfare**,⁶⁷ [~~or~~] social welfare, **or**⁶⁸ **cultural practices of the community and State**,⁶⁹ or
16 are otherwise set forth in section [~~11-200-12~~] **11-200A-12A** [~~of this chapter~~]⁷⁰.

17
18 **"Supplemental [statement] EIS"** means an [~~additional environmental impact statement~~] **updated**
19 **EIS**⁷¹ prepared for an **action** for which [~~a statement~~] **an EIS** was previously accepted, but which
20 has since changed substantively in size, scope, intensity, use, location, or timing, among other
21 things.

22
23 **A "trigger"** means any use or activity listed in section 343-5(a), HRS, requiring preparation of an
24 **EA.**⁷²

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

62 Changes grammatic structure of sentence to singular to mirror the definition of effect or impact as a singular object.

63 Stylistic change to reflect changes made to previous sentence.

64 Housekeeping.

65 Housekeeping.

66 Housekeeping.

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

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

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

70 Housekeeping.

71 Housekeeping.

72 Provides a new definition for "trigger". "Trigger" is a widely used term commonly understood by the public and even used by the Supreme Court. Introducing this term formally simplifies discussion of these uses or activities.

#010

Posted by **Linda M. B. Paul** on **11/26/2017** at **8:06pm**

Definitions. EIS preparation notice line 23. . . . "based on an EA, an agency's or an applicant's judgment"

If agency authorization is needed first then the applicant really isn't proceeding directly to an EIS.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 Unless defined above, elsewhere within this chapter, or in chapter 343, HRS, a **proposing**
2 **agency or approving agency** may use its administrative rules or statutes that they implement to
3 interpret undefined terms.⁷³

4

5 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-6)

6

⁷³ Provides clarification on how to interpret terms not defined in this chapter or chapter 343, HRS. The proposing agency or approving agency may use their own administrative rules or statutes to interpret undefined terms in this chapter.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 3A Computation of Time**

- 2 • Standardizes the computation of time for all time periods prescribed by this chapter and
3 HRS Chapter 343.

4 **§ 11-200A-3A Computation of Time⁷⁴**

5 In computing any period of time prescribed or allowed by this chapter, order of the council, or by
6 any applicable statute, the day of the act, event, or default after which the designated period of
7 time is to run, shall not be included. The last day of the period so computed shall be included
8 unless it is a Sunday or legal holiday.⁷⁵

9
10 [Eff and comp _____] (Auth: HRS §§ 1-29, 8-1, 343-6) (Imp: HRS §§ 1-29, 8-1, 343-6)

11

⁷⁴ Creates new subchapter and section to provide clarification on the computation of time. Language is consistent with HAR chapter 11-201 Environmental Council Rules of Practice and Procedure (1985), section 11-201-14, HAR.

⁷⁵ Provides for computation of time consistent with HAR 11-201 Environmental Council Rules of Practice and Procedure (1985), 11-201-14, HAR. For example, the publication date of a draft EA in the bulletin is day zero. Holidays and weekends are included in counting to thirty days, but if the deadline falls on a state holiday or non-working day, the deadline is the next working day.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 Subchapter 4A Filing and Publication in the Periodic 2 Bulletin

- 3 • Organizes the previous periodic bulletin subchapter into three sections.
- 4 • Section 4A is about the periodic bulletin itself and what is published in it.
- 5 • Section 5A is how to file for publication in the bulletin and consolidates previous language
- 6 in various sections of the HAR (1996) regarding filing requirements into one place.
- 7 • Section 6A is new language for when an agency or applicant seeks to publish the same
- 8 notice, document, or determination that it has published before and how to handle
- 9 associated comment periods.

10 § 11-200A-4A Periodic Bulletin⁷⁶

- 11 (a) The **periodic bulletin** shall be issued on the eighth and twenty-third days of each
12 month.⁷⁷
- 13
- 14 (b) ~~[The office shall inform the public through the publication of a periodic bulletin of the~~
15 ~~following:]~~ When filed in accordance with section 11-200A-5A, the **office** shall publish the
16 following in the **periodic bulletin** to inform the public of **actions** undergoing chapter 343,
17 HRS environmental review and the associated public comment periods provided here or
18 elsewhere by statute:⁷⁸
- 19 (1) **Exemption notices:**⁷⁹
- 20 (2) ~~[Notices filed by agencies of the availability of environmental assessments]~~ Draft
21 **EAs** and appropriate **addendum** documents for **public** review and ~~[comments]~~
22 thirty-day comment period, including notice of an anticipated **FONSI**.^{80/81}
- 23 (3) Final **EAs**, including notice of a **FONSI**, or an **EISPN** with thirty-day comment
24 period and notice of **EIS public scoping meeting**, and appropriate **addendum**
25 documents:⁸²

⁷⁶ Includes provisions from § 11-200-3, HAR (1996), which has been divided into two sections in v0.3, including this section and one specific to filing (11-200A-5A). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from 11-200-3, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

⁷⁷ Source: § 11-200-3(c), HAR (1996).

⁷⁸ Source: § 11-200-3(a), HAR (1996).

⁷⁹ Subsection 8A requires consultation for and publication of an exemption notice when an agency has not received council concurrence with its exemption list within seven years of implementing the action.

⁸⁰ Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

⁸¹ Source: § 11-200-3(a), HAR (1996).

⁸² Source: modified § 11-200-11.2(a)-(b), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (4) Notice of an EISPN with thirty-day comment period and notice of EIS public
 2 scoping meeting, and appropriate addendum documents;⁸³
 3 (5) [Notices filed by agencies of] Evaluations and determinations that supplemental
 4 [statements] EISs are required or not required;⁸⁴
 5 (6) [The availability of statements] Draft EISs, including draft supplemental
 6 [statements] EISs, and appropriate addendum documents for public review and
 7 forty-five day comment period;⁸⁵
 8 (7) Final EISs, including final supplemental EISs, and appropriate addendum
 9 documents;⁸⁶
 10 (8) [The] Notice of acceptance or non-acceptance of [statements] EISs, including
 11 supplemental EISs;⁸⁷
 12 (9) Republication of any chapter 343, HRS notices, documents, or determinations;⁸⁸
 13 (10) Notices of withdrawal of any chapter 343, HRS notices, documents, or
 14 determinations;⁸⁹
 15 (11) Other notices required by the rules of the council.⁹⁰
 16
 17 (c) When filed in accordance with this subchapter, the office shall publish other notices
 18 required by statute,⁹¹ or rules, including those not specifically related to chapter 343,
 19 HRS.⁹²
 20
 21

⁸³ Provides for publication of notice of EISPN when prepared without a Final EA through the direct-to-EIS pathway.

⁸⁴ Source: modified § 11-200-3(a)(2), HAR (1996) (publication of the determination regarding preparation of a supplemental EIS was previously in section 11-200-27, HAR (1996)).

⁸⁵ Source: § 11-200-3(a), HAR (1996).

⁸⁶ Source: § 11-200-21, HAR (1996), requiring the office to public notice of availability of EISs. In electronic format, the office also publishes the EIS itself.

⁸⁷ Source: § 11-200-3(a), HAR (1996).

⁸⁸ Requires the office to republish chapter 343, HRS notices, documents, or determinations when appropriate. The proposed filing section (11-200A-5A) and proposed republication of notices, documents, and determinations section (11-200A-6A) provide further requirements for the republication of certain submissions.

⁸⁹ Requires the office to publish notices of withdrawals. For example, under the 1996 rules, section 11-200-23 allowed for withdrawal of an EIS with written notification to the office. The office informs the public of the withdrawal through publication of the notice in the bulletin. The proposed filing section (11-200A-5A) provides further requirements for the withdrawal of certain submissions.

⁹⁰ Source: § 11-200-3(a), HAR (1996).

⁹¹ Section 343-3, HRS, also requires the OEQC to publish in the bulletin other matters not related to environmental review, such as a public hearing to process a habitat conservation plan, a proposed conservation plan or safe harbor agreement, an incidental take license as part of a habitat conservation plan or safe harbor agreement, and an application for the registration of land by accretion.

⁹² For example, the Department of Land and Natural Resource's regulations regarding shoreline certifications require notice to be published in the bulletin.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (d) The office may, on a space or time⁹³ available basis, publish other notices not
2 specifically related to chapter 343, HRS.⁹⁴
3
4 [Eff and comp _____] (Auth: HRS §§ 341-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-6)
5

⁹³ Section 5A(a), HAR, shortens the submittal deadline from eight days to four days, which may limit the ability of the OEQC to include non-mandatory material in the bulletin.

⁹⁴ Source: § 11-200-3(f), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-5A Filing Requirements for Publication and
 2 Withdrawals⁹⁵

- 3
- 4 (a) Anything⁹⁶ required to be published in the **bulletin** shall be submitted to the **office** before
 5 the close of business four⁹⁷ business days prior to the **issue date**.^{98/99}
- 6
- 7 (b) All submittals to the **office** for publication in the **bulletin** shall be accompanied by a
 8 completed informational form [which] that provides whatever information the **office** needs
 9 to properly notify the public. The information requested may include the following: the title
 10 of the **action**; the islands affected by the proposed **action**; tax map key numbers; street
 11 addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or
 12 other geographic data¹⁰⁰; applicable permits, including for **applicants**, the **approval**
 13 requiring chapter 343, HRS environmental review;¹⁰¹ whether the proposed **action** is an
 14 **agency** or an **applicant action**; a citation of the applicable federal or state statutes
 15 requiring preparation of the document; the type of document prepared; the names,
 16 addresses, email addresses, phone numbers¹⁰² and contact persons as applicable of the
 17 **accepting authority**, the **proposing agency**, the **approving agency**, the **applicant**, and
 18 the consultant; and a brief narrative summary of the proposed **action** [which] that
 19 provides sufficient detail to convey the full **impact** of the proposed **action** to the public.¹⁰³
- 20
- 21 (c) The **office** shall not accept untimely submittals or revisions thereto after the **issue date**
 22 **deadline** for which the submittal was originally filed has passed.¹⁰⁴
- 23

⁹⁵ This is a new section synthesizing language from multiple sections in chapter 11-200, HAR (1996). In the 1996 rules, the filing requirements are integrated into content or process steps and require numerous cross-references. Consolidating and standardizing the filing requirements into one section makes it easy to know where to look and to reference one section.

⁹⁶ This captures notices, documents, and determinations required under chapter 343, HRS as well as requirements for publication pursuant to other statutes or administrative rules (e.g., HAR § 13-222-12 for shoreline applications).

⁹⁷ The office does not need eight business days anymore to prepare the periodic bulletin.

⁹⁸ Removes instructions on the computation of time because v0.3 proposes a new section on computation of time to deal with such questions consistently.

⁹⁹ Modified language from section 11-200-3(c), HAR (1996).

¹⁰⁰ Clarifies that the office may ask for geographic data such as that included in a standard geographic information systems file. The existing rules already allow for this but this language is to make it clearer.

¹⁰¹ Clarifies that the informational form may require identification of the specific approval that in combination with a trigger requires an applicant to go through chapter 343, HRS environmental review. The existing rules already allow for this but this language is to make it clearer.

¹⁰² Makes explicit that the telephone numbers and email addresses of contact persons may be required by the office as part of the information needed to inform the public through the bulletin.

¹⁰³ Source: Modified § 11-200-3(d), HAR (1996).

¹⁰⁴ Clarifies that the office shall not accept untimely submissions. Late submissions will typically be published in the next issued bulletin. Submitters should speak with the office if a deadline is missed.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (d) In accordance with the **agency's** rules or, in the case of an **applicant EIS**, the
 2 **applicant's** judgment, anything filed with the **office** may be withdrawn by the **agency** or
 3 **applicant** that filed the submittal with the **office**. To withdraw a submittal, the **agency** or
 4 **applicant** shall submit to the **office** a written letter informing the **office** of the¹⁰⁵
 5 withdrawal¹⁰⁶. The **office** shall publish notice of [agency] withdrawals and the rationale in
 6 accordance with [section 11-200-3] this subchapter.^{107/108}
- 7
- 8 (e) To be published in the **bulletin**, all submittals to the **office** shall meet the filing
 9 requirements in subsections (a)-(c) and be prepared in accordance with this chapter and
 10 chapter 343, HRS, as appropriate. The following shall meet additional filing
 11 requirements:¹⁰⁹
- 12 (1) When the document is a draft **EA** with an anticipated **FONSI**¹¹⁰, the **proposing**
 13 **agency** or **approving agency** shall:
- 14 (A) File the document and determination with the **office**; and
- 15 (B) Deposit, or require the **applicant** to deposit, concurrently with the filing
 16 [~~paragraph (5)~~] to the **office**, one paper¹¹¹ copy of the draft [~~environmental~~
 17 ~~assessment~~] **EA** at the nearest state library in each county in which the
 18 proposed **action** is to occur and one paper copy at the Hawaii Documents
 19 Center^{112/113}
- 20 (C) Distribute, concurrently [~~with the filing in paragraph (5),~~] the draft
 21 [~~environmental assessment~~] **EA** to other agencies having jurisdiction or
 22 expertise as well as citizen groups and individuals which the **proposing**
 23 **agency** reasonably believes to be affected.¹¹⁴

¹⁰⁵ Housekeeping.

¹⁰⁶ Clarifies that agencies should support the withdrawal notice with a rationale.

¹⁰⁷ Source: Modified §§ 11-200-11.1(d) and 11-200-11.2(d), HAR (1996).

¹⁰⁸ Combines sections 11-200-11.1(d), HAR (1996); 11-200-11.2(d), HAR (1996); 11-200-23(f), HAR (1996) as modified in v0.2 into one paragraph and makes explicit that any notice, document, or determination, or any other submittal filed with the office may be withdrawn.

¹⁰⁹ The purpose of this subsection is to set forth any filing requirements specific to a submittal type and to make explicit the entity or entities responsible for fulfilling those requirements. If a submittal type is not listed here, then, to be published in the bulletin, it must meet the requirements in subsections (a)-(c) and the entity or entities responsible for fulfilling those requirements is made explicit elsewhere in this chapter.

¹¹⁰ Provides filing requirements for a Draft EA and anticipated FONSI, modified from sections 11-200-10 and 11-200-11.1, HAR (1996). A draft EA is always published with an anticipated FONSI. Note that at any point in the preparation of a draft EA, one may go to the EIS stage starting with an EISPN. The draft EA is then called a final EA and attached to the EISPN.

¹¹¹ 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 can review the document.

¹¹² 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.

¹¹³ Source: §§ 11-200-9(a)(10)(agency), 11-200-9(b)(10)(applicant), HAR (1996).

¹¹⁴ Source: §§ 11-200-9(a)(6)(agency), 11-200-9(b)(5)(applicant), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (2) When the document is a final EA with a FONSI, the proposing agency or
 2 approving agency shall:
 3 (A) Incorporate, or require the applicant to incorporate, the FONSI into the
 4 contents of the final EA, as prescribed in section 11-200A-21A and
 5 section 11-200A-22A;
 6 (B) File the final EA and the incorporated FONSI with the office; and
 7 (C) Deposit, or require the applicant to deposit, concurrently with the filing to
 8 the office, one paper copy of the final EA with the Hawaii Documents
 9 Center.^{115/116}
- 10 (3) When the document is a final EA with an EISPN, the proposing agency or
 11 approving agency shall:
 12 (A) Incorporate, or require the applicant to incorporate, the EISPN into the
 13 contents of the final EA, as prescribed in section 11-200A-21A, section
 14 11-200-22A, and section 11-200A-23A;
 15 (B) File the incorporated EISPN with the final EA; and
 16 (C) Deposit, or require the applicant to deposit, concurrently with the filing to
 17 the office, one paper copy of the final EA with the Hawaii Documents
 18 Center.^{117/118}
- 19 (4) When the notice is an EISPN without the preparation of an EA, the proposing
 20 agency or approving agency shall:
 21 (A) File the EISPN with the office; and
 22 (B) Deposit, or require the applicant to deposit, concurrently with the filing to
 23 the office, one paper¹¹⁹ copy of EISPN at the nearest state library in each
 24 county in which the proposed action is to occur and one paper copy at the
 25 Hawaii Documents Center.¹²⁰
- 26 (5) When the document is a draft EIS, the proposing agency or applicant shall:

¹¹⁵ 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 final EA.

¹¹⁶ Source: modified §§ 11-200-10 and 11-200-11.2, HAR (1996).

¹¹⁷ 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 final EA.

¹¹⁸ Source: modified §§ 11-200-10 and 11-200-11.2, HAR (1996).

¹¹⁹ 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 can review the document.

¹²⁰ 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 an EISPN.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (A) [sign] Sign and date [the original copy of]¹²¹ the draft [or final] EIS [and
 2 shall]¹²²;
 3 (B) Indicate that the draft [statement] EIS and all ancillary documents were
 4 prepared under the signatory's direction or supervision and that the
 5 information submitted, to the best of the signatory's knowledge fully
 6 addresses document content requirements as set forth in [sections 11-
 7 200-17 and 11-200-18, as appropriate] subchapter 10A.¹²³
 8 (C) File the draft EIS with the accepting authority and the office
 9 simultaneously¹²⁴ ; and
 10 (D) Deposit, or require the applicant to deposit, concurrently with the filing to
 11 the office, one paper¹²⁵ copy of the draft EIS at the nearest state library in
 12 each county in which the proposed action is to occur and one paper copy
 13 at the Hawaii Documents Center.^{126/127}
 14 (6) When the document is a final EIS, the proposing agency or applicant shall:
 15 (A) [sign] Sign and date [the original copy of]¹²⁸ the [draft or] final EIS [and
 16 shall]¹²⁹;
 17 (B) Indicate that the final [statement] EIS and all ancillary documents were
 18 prepared under the signatory's direction or supervision and that the
 19 information submitted, to the best of the signatory's knowledge fully
 20 addresses document content requirements as set forth in [sections 11-
 21 200-17 and 11-200-18, as appropriate] subchapter 10A,¹³⁰ and
 22 (C) File the final EIS with the accepting authority and the office
 23 simultaneously.¹³¹
 24 (7) When the notice is an acceptance or non-acceptance of a final EIS, the
 25 accepting authority shall:
 26 (A) File the notice of acceptance or non-acceptance of a final EIS with the
 27 office; and

¹²¹ Removes "original, signed" as it does not make sense for digital documents.

¹²² Source: modified § 11-200-20(d), HAR (1996).

¹²³ Source: Modified § 11-200-20(d), HAR (1996).

¹²⁴ Source: Modified § 11-200-20(a), HAR (1996).

¹²⁵ 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 can review the document.

¹²⁶ 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 EIS.

¹²⁷ Mirrors language for other documents and determinations that are required to be deposited in hard copy at the nearest state library in each county in which the proposed action is to occur and with the Hawaii Documents Center.

¹²⁸ Removes "original, signed" as it does not make sense for digital documents.

¹²⁹ Source: modified § 11-200-20(d), HAR (1996).

¹³⁰ Source: modified § 11-200-20(d), HAR (1996).

¹³¹ Source: modified § 11-200-20(a), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (B) Simultaneously transmit the notice to the **proposing agency or applicant**.
- 2 (8) When the notice is of the withdrawal of an anticipated **FONSI, FONSI, or EISPN**
- 3 **the proposing agency or approving agency** shall include a rationale of the
- 4 **withdrawal specifying any associated documents to be withdrawn.**¹³²
- 5 (9) When the notice is of the withdrawal of a draft **EIS** or final **EIS**, the **proposing**
- 6 **agency or applicant** shall simultaneously file the notice with the **office** and
- 7 **submit the notice with accepting authority.**¹³³
- 8 (10) When the submittal is a changed version of a notice, document, or determination
- 9 **previously published and withdrawn, the submittal shall be filed as the “second”**
- 10 **submittal, or “third” or “fourth”, as appropriate. (Example: A draft EIS is withdrawn**
- 11 **and changed. It is then filed with the office for publication as the “second draft**
- 12 **EIS” for the particular action.)**¹³⁴

13

14 [Eff and comp _____] (Auth: HRS §§ 343-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-6)

15

¹³² Source: modified § 11-200-11.1(d), HAR (1996).

¹³³ Source: modified § 11-200-23(f), HAR (1996).

¹³⁴ Provides clarification on how withdrawn, amended, and re-filed notices, documents, and determinations shall be referred to. Corrections for items such as typos can be handled through addenda.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-6A Republication of Notices, Documents, and
 2 Determinations¹³⁵

3 (a) An agency or applicant responsible for filing a chapter 343, HRS notice, document, or
 4 determination, may file a previously published submittal that has not been changed in the
 5 bulletin provided that the filing requirements of this subchapter and any other publication
 6 requirements set forth in this chapter or chapter 343, HRS are satisfied.¹³⁶

7
 8 (b) When the publication of a previously published chapter 343, HRS notice, document, or
 9 determination involves a public comment period under this chapter or chapter 343, HRS:

10 (1) The public comment period shall be as required for that notice, document, or
 11 determination pursuant to this chapter or chapter 343, HRS or as otherwise
 12 statutorily mandated. (For example, publication of an unchanged draft EIS initiates
 13 a forty-five day public comment period upon publication in the bulletin.); and

14 (2) Any comments received during the comment period must be considered in the
 15 same manner as set forth in this chapter and chapter 343, HRS, for that notice,
 16 document, or determination type, in addition to comments received in any other
 17 comment period associated with the publication of the notice, document, or
 18 determination.¹³⁷

19
 20 [Eff and comp _____] (Auth: HRS §§ 341-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-5,
 21 343-6)

22

¹³⁵ New section to address the practice of republication of chapter 343 notices, documents, and determinations. Chapter 343, HRS is silent on whether comment periods may be extended. In practice, proposing agencies, applicants, and approving agencies have sought to extend comment periods. When this occurs outside the standard time period for public comment or outside the notification process through the bulletin, inconsistencies arise in the process creating questions of public notification and, in some cases, standing. Instead of having inconsistently applied "extended comment period," this section states that the standard filing, comment, and response requirements of chapter 343, HRS apply each time something is published.

¹³⁶ Provides that any agency or applicant that filed a chapter 343 notice, document, or determination may withdraw and republish the same notice, document, or determination. Other submittals to the office required by council rules, statute other than chapter 343, HRS, or an agency's administrative rules other than this chapter may also be withdrawn and republished, but must be done so in accordance with that statute or those rules. There is no chapter 343, HRS obligation to publish an unchanged document again; however, a proposing or approving agency's own statutes, rules, or procedures may require or call for it.

¹³⁷ Clarifies when a public comment period is required with the republication of a chapter 343, HRS notice, document, or determination and how comments received in two or more comment periods for an unamended but republished notice, document, or determination are to be handled. The requirement to address comments in all comment periods resulting from multiple publications is to reduce the possibility of repeated publications to achieve fewer comments. Comments received outside of the multiple comment periods are not be required to be addressed.

#011

Posted by **Shannon Rudolph** on **10/30/2017** at **3:33pm**

Comment

Aloha,

30 days to comment on 95 pages of Hawaii Administrative Rule changes is a huge slap in the face to the average busy resident who may have only found out about these proposed changes a few days before a hearing is to be held.

Trying to quickly get up to speed on reading through the 95 pages of legalese is infuriating and adds to residents anger about feeling the State is 'pulling a fast one' on constantly attempting to weaken our environmental regulations and adding to residents mistrust of agencies we count on to protect our interests.

It is also extremely frustrating for neighbor island residents to have to take the time and expense to fly to Honolulu to be able to testify, especially knowing companies who hope to benefit from these rule changes or maybe have even helped to write them, are always close by, in the hallways and offices of our legislators.

I strongly object to ANY actions to exempt or weaken requirements to perform an E.I.S. or EA.

Also, I object to the batching of comments that the proposing agency or applicant would deem to be similar. Many residents understand this particular rule change to be beneficial especially to 'dairies' (and other companies) right now.

And to add insult to injury - the rules for the O'okala Dairy at present are holy inadequate as are the fines levied by the Dept. of Health. You can't drive near O'okala today without gagging and nearly throwing up. It's a damn sad situation when residents must sue to force businesses to follow the law and when our own agencies charged to protect us are busy weakening the laws that benefit residents.

I object to any changes in these 4 items in particular, and the weakening of ANY environmental rules in general. We need to strengthen these rules, not make them worse.

6. Buildings and infrastructure to support or enhance safe and effective agricultural practices, including, pesticide/regulated material storage, equipment storage, extension of security, system control and data acquisition (SCADA), measuring devices, communication equipment, and radio repeaters.

7. Installation of automatic fish feeding devices in reservoirs, ponds, or other impoundments, rearing pens for cage culture of fishes and aquatic organisms.

10. Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; distribution of bio-control agents approved by the state of Hawaii; and other approved methods.

14. Issuance of leases, licenses, or permits of ADC lands, water systems, processing facilities,

consolidation facilities, or infrastructure for consistent with the ADC mission, including the support and promotion of diversified agriculture in the State.Hawaii Administration Rule

Mahalo,

Shannon Rudolph

P. O. 243 Holualoa, Hi. 96725

35

year

Hawai`i

resident

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 5A Responsibilities**

- 2 • Identifies who is the decision maker in which circumstances for agencies and applicants
3 going through environmental review.

4 **§ 11-200A-7A Identification of Approving Agency and Accepting**
5 **Authority**¹³⁸

6 (a) Whenever an **agency** proposes an **action**, the [final]¹³⁹ authority to accept [a statement]
7 an EIS shall rest with:

- 8 (1) The governor, or [an] the governor's¹⁴⁰ authorized representative, whenever an
9 **action** proposes the use of state lands or [the use of]¹⁴¹ state funds or []¹⁴²
10 whenever a state **agency** proposes an **action** [within] under¹⁴³ section [11-200-
11 6(b)] 11-200A-9A; or
12 (2) The mayor, or [an] the mayor's¹⁴⁴ authorized representative, of the respective
13 county whenever an **action** proposes only the use of county lands or county
14 funds.

15 In the event that an **action** involves state and county lands, state and county¹⁴⁵ funds, or
16 both state and county¹⁴⁶ lands and funds, the governor or the governor's authorized
17 representative shall have authority to accept the EIS.¹⁴⁷

18
19 (b) Whenever an **applicant** proposes an **action**, the authority for requiring an EA or¹⁴⁸
20 [statements] EIS, [and for] making a determination regarding any required EA, and¹⁴⁹
21 accepting any required [statements] EIS [that have been prepared] shall rest with the

¹³⁸ Previously § 11-200-4, HAR (1996). All language in this section comes from section 11-200-4, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

¹³⁹ Removes the word "final" because it does not add to the meaning of the sentence.

¹⁴⁰ Housekeeping.

¹⁴¹ Housekeeping.

¹⁴² Housekeeping.

¹⁴³ Housekeeping.

¹⁴⁴ Housekeeping.

¹⁴⁵ Clarifies that "state and county" funds are meant.

¹⁴⁶ Clarifies that "state and county" lands and funds are meant.

¹⁴⁷ 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, HAR (1996).

¹⁴⁸ Adds EAs to the identification of which agency has responsibility. Note that this change also means that the office is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the office is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

¹⁴⁹ Adds EAs to the identification of which agency has responsibility. Language is phrased so that the agency can make a FONSI or EISPN determination.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 **approving**¹⁵⁰ **agency** [~~initially receiving and agreeing~~] **that initially received and agreed**¹⁵¹
 2 to process the request for an **approval**. **With respect to EISs, this approving agency is**
 3 **also called the accepting authority.**¹⁵²
 4
- 5 (c) In the event that [~~there is~~]¹⁵³ more than one **agency** [~~that~~] **is proposing the action or, in**
 6 **the case of applicants,**¹⁵⁴ **more than one agency**¹⁵⁵ has jurisdiction over the **action**, and
 7 these **agencies** are unable to agree as to which **agency** has the responsibility for
 8 complying with [~~section 343-5(e)~~] **chapter 343**¹⁵⁶, HRS, [~~the office, after consultation with~~]
 9 the **agencies** involved, shall **consult with one another to** determine which **agency** is
 10 responsible **for compliance**¹⁵⁷. In making the [~~determination~~] **decision**, the [~~office~~]
 11 **agencies** shall take into consideration, including, but not limited to, the following factors:
 12 (1) [~~The~~] **Which agency** [~~with the~~] **has the** greatest responsibility for supervising or
 13 approving the **action** as a whole;
 14 (2) [~~The~~] **Which agency** [~~that~~] can most adequately fulfill the requirements of chapter
 15 343, HRS, and this chapter;
 16 (3) [~~The~~] **Which agency** [~~that~~] has special expertise or **greatest**¹⁵⁸ access to
 17 information **relevant to the action's implementation and impacts**¹⁵⁹; [~~and~~]
 18 (4) The extent of participation of each **agency** in the **action**[-]; **and**
 19 (5) **In the case of an action with proposed use of state or county lands or funds,**
 20 **which agency has the most land or funds involved in the action.**¹⁶⁰
 21
- 22 (d) **In the event that there is more than one agency that is proposing the action, or in the**
 23 **case of applicants, more than one agency has jurisdiction over the action, and after**
 24 **applying the criteria in subsection (c) these agencies are unable to agree as to which**
 25 **agency has the responsibility for complying with chapter 343, HRS, the office, after**

¹⁵⁰ Housekeeping. Clarifies that the "agency" is called the "approving agency."

¹⁵¹ Housekeeping.

¹⁵² Clarifies that the approving agency for environmental review compliance is also the accepting authority for applicants. HRS § 343-5(e) states that for applicants "the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an [EA] of the proposed action," which is the approving agency. It further states that the "authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval." The agency with the authority to accept a final statement is the accepting authority, which is the agency initially receiving and agreeing to process the request for approval.

¹⁵³ Stylistic change to increase readability.

¹⁵⁴ Clarifies the authority for determining who has responsibility for chapter 343, HRS compliance.

¹⁵⁵ Stylistic change to increase readability.

¹⁵⁶ Housekeeping. Section paragraphs change frequently over time; language here is adjusted to refer to the chapter of the statute because it is a more stable reference point.

¹⁵⁷ Stylistic change to increase readability.

¹⁵⁸ Helps to distinguish among agencies because all agencies have access to information but some have more access to information related to the action than others.

¹⁵⁹ Clarifies what kind of information is meant.

¹⁶⁰ Instructs agencies and the office to consider which agency has the most land or funds involved in an action when deciding which agency will be responsible for complying with chapter 343, HRS.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 consultation with the **agencies** involved, shall apply the same considerations in
 2 subsection (c) to decide which **agency** is responsible for compliance.¹⁶¹
 3
 4 (e) The **office** shall not serve as the **accepting authority** for any **proposed agency or**
 5 **applicant action**.¹⁶²
 6
 7 (f) The **office** may provide recommendations to the **agency or applicant**¹⁶³ responsible for
 8 the ~~environmental assessment~~ **EA** or **EIS** regarding any applicable administrative
 9 content requirements set forth in this chapter.¹⁶⁴
 10
 11 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)
 12

¹⁶¹ The changes to subsections (c) and (d) provide a process for agencies to decide amongst themselves which agency shall be responsible for complying with chapter 343, HRS when two or more agencies are involved in an action. A list of considerations is provided for the agencies to make their decision. This section is also now divided into two subsections, providing that if agencies cannot make a decision, the office shall decide for the agencies using the same considerations listed in subsection (c).

¹⁶² Clarifies that office may not serve as the accepting authority.

¹⁶³ Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.

¹⁶⁴ Source: modified § 11-200-3(e), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 6A Applicability**

- 2
- 3
- 4
- 5
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- 7
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- 9
- 10
- Revises the applicability subchapter to focus on the steps to decide whether an activity requires chapter 343, HRS review.
 - Section 8A is a new section providing a *de minimis* standard for activities that do not rise to being an action.
 - Section 9A addresses agency actions, the trigger for the use of state or county lands or funds, and emergency actions (both under a governor-declared state of emergency and for emergency situations requiring immediate response).
 - Section 10A addresses applicant actions and incorporates section 343-5.5, HRS.
 - Section 11A addresses multiple or phased actions.

11 **§ 11-200A-8A General Applicability¹⁶⁵**

12 Prior to beginning chapter 343, HRS, environmental review, a **proposing agency** or an
 13 **approving agency** in case of an **applicant action**, using its own judgment and experience, shall
 14 define the nature and scope of the proposed activity to determine the necessity of chapter 343,
 15 HRS environmental review. Routine activities and ordinary functions that by their nature do not
 16 have the potential to individually or **cumulatively** adversely affect the **environment** more than
 17 negligibly do not rise to the level of an **action** requiring chapter 343, HRS environmental review.
 18 Examples of routine activities and ordinary functions may include, among others, routine repair,
 19 maintenance, purchase of supplies, and continuing¹⁶⁶ administrative activities involving
 20 personnel only and personnel-related matters¹⁶⁷¹⁶⁸

21

22 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

23

¹⁶⁵ Provides a new section on the first step of determining whether an activity requires chapter 343, HRS environmental review and clarifies which activities do not rise to the level of requiring review.

¹⁶⁶ Includes ongoing administrative activities, such as purchasing paper clips.

¹⁶⁷ Captures item deleted from section 11-200-8(a)(10), HAR, (1996) in the v0.3 equivalent subchapter 8A, and specifically section 11-200A-15A regarding the general types of actions eligible for exemption.

¹⁶⁸ Establishes a *de minimis* level of activity for being considered eligible for environmental review. Chapter 343, HRS. This section was originally presented in v0.2 under the exemptions section 11-200-08 (v0.2).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-9A Applicability of Chapter 343 to Agency Actions¹⁶⁹

- 2 (a) Chapter 343, HRS, environmental review shall be required for any agency action that
 3 includes one or more triggers, as identified in section 343-5(a), HRS.^{170/171}
- 4 (1) Under section 343-5(a), HRS, use of state or county funds shall include any form
 5 of funding assistance flowing from the State or a¹⁷² county, and use of state or
 6 county lands includes any use (title, lease, permit, easement, licenses, etc.) or
 7 entitlement to those lands.¹⁷³
- 8 (2) [~~For agency actions, chapter 343, HRS, exempts from applicability~~] Under section
 9 343-5(a), HRS, any feasibility or planning study for possible future **programs** or
 10 **projects** ~~which~~ that the **agency** has not ¹⁷⁴proved, adopted, or funded are
 11 exempted from chapter 343, HRS, environmental review.¹⁷⁴ Nevertheless, if an
 12 **agency** is studying the feasibility of a proposal, it shall consider environmental
 13 factors and available alternatives and disclose these in any future ~~[assessment]~~
 14 **EA** or subsequent ~~[statement]~~ **EIS**. If ~~[, however,]~~¹⁷⁵ the planning and feasibility
 15 studies involve testing or other actions ~~which~~ that may have a **significant**
 16 **impact** on the environment, ~~[then]~~¹⁷⁶ an ~~[environmental assessment]~~ **EA or EIS**¹⁷⁷
 17 shall be prepared.¹⁷⁸ (Example: Testing that would likely not require an EA or EIS
 18 could include city infrastructure trials to improve traffic flows or reduce congestion
 19 within an already built environment, such as deploying temporary bulbouts.)¹⁷⁹
- 20 (3) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under
 21 section 205-2(d)(11)¹⁸⁰, HRS or section 205-4.5(a)(13)¹⁸¹, HRS, must perform
 22 environmental review only when required under section 205-5(b)¹⁸², HRS.

¹⁶⁹ Formerly § 11-200-5, HAR (1996). All language in this section comes from section 11-200-5, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

¹⁷⁰ Language from *Umberger v. Dept. of Land and Nat. Resources*, SCWC-13-0002125, 2017 WL 3887456 (Haw. Sept. 6, 2017) (“For an activity to be subject to HEPA environmental review, the second requirement is that it must fall within at least one category of land uses or administrative acts (known as “triggers”) enumerated in HRS § 343-5(a) (2010”).

¹⁷¹ All language in this section comes from section 11-200-5, HAR (1996), section 343-5, HRS, or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

¹⁷² Housekeeping.

¹⁷³ Source: Modified § 11-200-5(c), HAR (1996).

¹⁷⁴ Stylistic change.

¹⁷⁵ Housekeeping.

¹⁷⁶ Housekeeping.

¹⁷⁷ Acknowledges direct-to-EIS pathway.

¹⁷⁸ Source: Modified § 11-200-5(c), HAR (1996).

¹⁷⁹ Provides an example of testing that would likely not require preparation of an EA or EIS because it would likely take place in a built environment.

¹⁸⁰ This exception to the general requirements of chapter 343, HRS to agricultural tourism is provided for under section 343-5(a)(1), HRS. Section 205-2(d)(11) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of

#012

Posted by **Jesse** on **11/02/2017** at **7:26pm**

Question

Wouldn't the agency need to "allow" if not "approve" use of its right-of-way in the below example?

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1
- 2 (b) When an agency proposes an action during a governor-declared state of
- 3 emergency, the proposing agency shall document in its records
- 4 that the emergency action was undertaken pursuant to a specific emergency
- 5 proclamation.¹⁸³ If the emergency action has not substantially commenced within
- 6 sixty days of the emergency proclamation, the action will be subject to chapter 343,
- 7 HRS.^{184/185/186}
- 8
- 9 (c) In the event of a sudden unexpected emergency causing or likely to cause loss or
- 10 damage to life, health, property, or essential public service, but for which a declaration of
- 11 a state of emergency has not been made, a proposing agency undertaking an
- 12 emergency action shall document in its records that the emergency action was
- 13 undertaken pursuant to a specific emergency.¹⁸⁷

visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

¹⁸¹ Section 205-4.5(a)(13) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

¹⁸² Section 205-5(b) states in pertinent part: “Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity.”

¹⁸³ Adds that the agency has a responsibility to record when it undertakes an action during an emergency proclamation and that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

¹⁸⁴ Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count and extend the time that an action has to reach substantial commencement. This provision does not explicitly reference the possibility for extension because the extension is provided for under section 127A-14(d). The council does not have authority to make rules implementing section 127A-14(d) and therefore, to avoid any conflict that may arise if section 127A-14(d) is amended, these rules remain silent on it. The term “substantially commenced” is not defined here because the intent is to provide direction to agencies to timely implement the action but not define the standard for all agencies in all situations.

¹⁸⁵ Ensures that the actions excluded from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under section 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations could re-start the sixty day count and extend the time that an action has to reach substantial commencement. This provision does not explicitly reference the possibility for extension because the extension is provided for under section 127A-14(d). The council does not have authority to make rules implementing section 127A-14(d) and therefore, to avoid any conflict that may arise if section 127A-14(d) is amended, these rules remain silent on it.

¹⁸⁶ Source: modified § 11-200-8(f), HAR (1996).

¹⁸⁷ This provision is added to address situations where an agency must respond to an emergency and that response would fall within the scope of chapter 343, HRS, but the nature of the emergency requires

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1
2
3

[Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

immediate response. The provision only allows an agency to act in an emergency to take immediate action to address the emergency in the absence of an emergency proclamation. For example, during a forest fire, an emergency firebreak may need to be cut. In the case of King Tides, an issue raised by one commenter, it would not extend to reconstruction to homes after the emergency has passed, but may apply to immediate measures to address the situation. Adds that the agency has a responsibility to record when it undertakes an action during an emergency and that the action occurred during a specific emergency in case a question arises about the lack of an assessment.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-10A Applicability of Chapter 343 to Applicant Actions¹⁸⁸2 (a) Chapter 343, HRS, environmental review shall be required for any applicant action that:3 (1) Requires one or more [agency] approvals¹⁸⁹ prior to implementation; and4 (2) Includes one or more triggers identified in section 343-5(a), HRS.¹⁹⁰5 (A) Under Chapter 343-5(a), HRS, use of state or county funds shall include6 any form of funding assistance flowing from the State or a¹⁹¹ county, and7 use of state or county lands includes any use (title, lease, permit,8 easement, licenses, etc.) or entitlement to those lands.¹⁹²9 (B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism10 under section 205-2(d)(11)¹⁹³, HRS or section 205-4.5(a)(13)¹⁹⁴, HRS,11 must perform environmental review only when required under section 205-12 5(b)¹⁹⁵, HRS.¹⁹⁶

13

14

¹⁸⁸ Formerly § 11-200-6, HAR (1996). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from 11-200-6, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

¹⁸⁹ Deletes “agency” because “approval” is a defined term meaning a discretionary consent issued by an agency.

¹⁹⁰ Modifies § 11-200-6(a), HAR (1996). This reorganization is intended to clarify that the agency approval that fulfills the first criteria for the necessity of chapter 343, HRS environmental review does not need to relate to the trigger within the proposed action, which is the second criteria that necessitates chapter 343, HRS environmental review. Further, an applicant action may require multiple approvals. These should be considered as part of the whole action and not as creating discrete actions for each approval.

¹⁹¹ Housekeeping.

¹⁹² Source: Modified § 11-200-5(c), HAR (1996).

¹⁹³ This exception to the general requirements of chapter 343, HRS to agricultural tourism is provided for under section 343-5(a)(1), HRS. Section 205-2(d)(11) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

¹⁹⁴ Section 205-4.5(a)(13) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

¹⁹⁵ Section 205-5(b) states in pertinent part: “Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity.”

¹⁹⁶ Subparagraph (a)(2)(A) draws from and modifies section 11-200-6(b), HAR (1996). Removes unnecessary language and retains the essential elements triggering applicability of chapter 343, HRS to applicant actions: discretionary consent and a trigger under 343-5, HRS. By incorporating reference to section 343-5(a), HRS in proposed subsection (a)(2), much of what was included in subsection 11-200-6(b), HAR (1996) becomes unnecessary and is removed.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (b) Chapter 343, HRS environmental review is not required for **applicant actions** when:
- 2 (1) Notwithstanding any other law to the contrary, for any primary action that requires
- 3 a permit or approval that is not subject to a discretionary consent and that involves
- 4 a secondary action that is ancillary and limited to the installation, improvement,
- 5 renovation, construction, or development of infrastructure within an existing public
- 6 right-of-way or highway, that secondary action shall be exempt from this chapter;
- 7 provided that the **applicant** for the primary action shall submit documentation
- 8 from the appropriate **agency** confirming that no further discretionary approvals are
- 9 required.
- 10 (2) As used in this subsection¹⁹⁷:
- 11 (A) "Discretionary consent" means an **action** as defined in section 343-2; or
- 12 an **approval** from a decision-making authority in an **agency**, which
- 13 **approval** is subject to a public hearing.
- 14 (B) "Infrastructure" includes waterlines and water facilities, wastewater lines
- 15 and wastewater facilities, gas lines and gas facilities, drainage facilities,
- 16 electrical, communications, telephone, and cable television utilities, and
- 17 highway, roadway, and driveway improvements.
- 18 (C) "Primary action" means an **action** outside of the highway or public right-of-
- 19 way that is on private property.
- 20 (D) "Secondary action" means an **action** involving infrastructure within the
- 21 highway or public right-of-way.¹⁹⁸
- 22
- 23 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § §343-5, 343-6)
- 24

¹⁹⁷ Definitions provided here only apply to this subsection b. As such, they are not bolded because they are not using the terms as defined by section 11-200A-2A, HAR. Terms used in this subsection as defined by section 11-200A-2A, HAR are bolded.

¹⁹⁸ Includes exclusion to chapter 343, HRS environmental review as provided for in chapter 343-5.5, HRS. This provision was added to chapter 343, HRS, in the 2012 legislative session (L 2012, c 312 § 1).

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-11A Multiple or Phased Actions¹⁹⁹

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

- 4 (1) The component **actions** are phases or increments of a larger total undertaking;
 5 (2) An individual [project] **action**²⁰⁰ is a necessary precedent [~~for~~] **to**²⁰¹ a larger
 6 [project] **action**²⁰²;
 7 (3) An individual [project] **action**²⁰³ represents a commitment to a larger [project]
 8 **action**²⁰⁴; or
 9 (4) The **actions** in question are essentially identical and a single **EA or**²⁰⁵ [statement]
 10 **EIS** will adequately address the **impacts** of each individual **action** and those of
 11 the group of **actions** as a whole.

12

13 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)

14

¹⁹⁹ Formerly § 11-200-7, HAR (1996). All language in this section comes from section 11-200-7, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

²⁰⁰ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

²⁰¹ Stylistic change.

²⁰² Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

²⁰³ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

²⁰⁴ Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

²⁰⁵ Clarifies that multiple or phased actions may also be reviewed in an EIS and do not necessarily require an EA prior to preparing an EIS.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 7A Determination of Significance**

- 2 • This subchapter provides direction to agencies in deciding the appropriate level of review
 3 to satisfy chapter 343, HRS, is required: exemption, EA and FONSI, or EIS and
 4 acceptance.
 5 • Section 12A moves the significance criteria language to here as the criteria are the basis
 6 for agencies to decide the appropriate level of review.
 7 • Section 13A provides that the proposing agency or approving agency uses judgment and
 8 experience to initially determine the level of environmental review, which may be an
 9 exemption, preparation of an EA, or direct preparation of an EIS.
 10 • Section 14A addresses how to incorporate the consideration of previous actions into
 11 deciding the appropriate level of review.

12 **§ 11-200A-12A Significance Criteria²⁰⁶**

- 13 (a) In considering the significance of potential environmental **effects**, agencies shall consider
 14 the sum of **effects** on the quality of the environment[;]²⁰⁷ and shall evaluate the overall
 15 and **cumulative effects** of an action.
 16
 17 (b) In determining whether an **action** may have a **significant effect** on the **environment**,
 18 the **agency** shall consider every phase of a proposed **action**, the expected
 19 [consequences] **impacts**²⁰⁸, both **primary** and **secondary**, and the **cumulative** as well
 20 as the short-term and long-term **effects** of the **action**. In most instances, an **action** shall
 21 be determined to have a **significant effect** on the **environment** if it **is likely to**^{209/210}
 22 (1) [~~Involves an irrevocable commitment to loss or destruction of any natural or~~
 23 ~~cultural resource~~] **irrevocably commit a natural or cultural resource**²¹¹;
 24 (2) [~~Curtails~~] **Curtail** the range of beneficial uses of the **environment**;

²⁰⁶ Formerly § 11-200-12, HAR (1996). All language in this section comes from section 11-200-12, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

²⁰⁷ Housekeeping.

²⁰⁸ Replaces “consequences” with “impacts” because both “primary impact” and “secondary impact” are defined, but the use of “consequences” introduces a new, undefined term as a synonym for “impact”.

²⁰⁹ While section 5 of chapter 345, HRS, provides that an EIS is required for an action that “may” have a significant effect, the Supreme Court of Hawaii has interpreted the word “may” to mean “likely”. For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will “likely” have a significant effect on the environment.

²¹⁰ Changes in (b)(1)-(13), unless otherwise indicated, align syntax with the revised language “is likely to” and revise language to more closely match the definition of “significant effect” in section 343-2, HRS, including mirroring the emphasis on “adverse” effects.

²¹¹ This language is modeled on statutory language in section 343-2, HRS. Refer to proposed section 11-200A-24A(j) for more on natural and cultural resources in a draft EIS.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (3) [~~Conflicts~~] **Conflict** with the [~~state's~~] **State's**²¹² [~~long-term~~] environmental policies or
 2 **long-term environmental** goals [~~and guidelines as expressed in chapter 344, HRS,~~
 3 ~~or other laws,~~] **as established by law**²¹³ [~~and any revisions thereof and~~
 4 ~~amendments thereto, court decisions, or executive orders~~];
- 5 (4) [~~Substantially affects~~] **Have a substantial adverse effect on** the economic **welfare,**
 6 [~~or~~] social welfare **or cultural practices**²¹⁴ of the community or State;
- 7 (5) [~~Substantially affects~~] **Have a substantial adverse effect on** public health;
- 8 (6) [~~Involves~~] **involve adverse secondary impacts**, such as population changes or
 9 **effects** on public facilities;
- 10 (7) [~~Involves~~] **involve** a substantial degradation of environmental quality;
- 11 (8) Is individually limited but **cumulatively** has [~~considerable~~] **substantial adverse**
 12 **effect** upon the **environment** or involves a commitment for larger actions;
- 13 (9) [~~Substantially affects~~] **Have a substantial adverse effect on** a rare, threatened, **or**⁰¹⁴
 14 endangered species, or its habitat;
- 15 (10) [~~Detrimentially affects~~] **Have a substantial adverse effect on** air or water quality or
 16 ambient noise levels;
- 17 (11) [~~Affects~~] **Have a substantial adverse effect on** or is likely to suffer damage by
 18 being located in an environmentally sensitive area such as a flood plain, tsunami **or**⁰¹³
 19 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh
 20 water, or coastal waters²¹⁵;
- 21 (12) [~~Substantially affects~~] **Have a substantial adverse effect on** scenic vistas and
 22 viewplanes, **during day or night,**²¹⁶ identified in county or state plans or studies; or,
- 23 (13) [~~Requires~~] **Require** substantial energy consumption²¹⁷.

24
 25 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-6)
 26

²¹² Housekeeping.

²¹³ Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act. "Laws" may be broadly defined to include common law and executive orders so long as they establish long-term environmental policies or goals.

²¹⁴ 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.

²¹⁵ This criterion addresses concerns related to climate change adaptation such as impacts from sea-level rise, increased hurricane frequency and/or intensity, and endangered species migration. Proposing an action in a location likely to experience sea-level rise, coastal erosion, or increased exposure to hurricanes may be reason to require the preparation of an EIS.

²¹⁶ Clarifies that both the daytime and night-time effects on scenic vistas and viewplanes must be considered when determining if an action will have a significant effect. Bright lighting around an action site at night, for example, may disrupt scenic vistas or viewplanes even though the action site is not conspicuous and does not otherwise have a substantial adverse effect on the scenic vista or viewplane during the day.

²¹⁷ This criterion addresses concerns related to climate change mitigation. A proposed action likely to require substantial energy consumption, especially when drawing on energy generated from fossil-fuels, may be reason to require the preparation of an EIS.

#013

Posted by **Eileen Kechloian** on **11/23/2017** at **3:41pm**

Comment

Wetlands might ne added here as they don't appear to be addressed.

Agree: 0, Disagree: 0

#014

Posted by **Eileen Kechloian** on **11/23/2017** at **7:10pm**

Comment

It is imperative that habitat that can sustain endangered or threatened species not be allow to be disturbed or the species will not have a habitat to grow into.

Suggested: or habitat that is inviting and supportive of endangered threatened species not currently located there.

Agree: 0, Disagree: 0

#015

Posted by **Anonymous** on **10/30/2017** at **2:39pm**

Question

Cultural practices are not defined in the referenced legislation. How will an applicant determine if an action has a substantial adverse effect on cultural practices. If people in the community state they will be impacted, with these rules there is no way to dispute or counter the assertion other than through litigation and the permit appeal process. The EA/EIS process simply then identifies the concern and does nothing to evaluate or discuss the effect.

Agree: 0, Disagree: 0

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-13A Determination of Level of Environmental Review²¹⁸

- 2 (a) For an **agency action**, through its judgment and experience, an **agency proposing an**
 3 **action**, shall assess the significance of the potential **impacts** of the **action**, including the
 4 overall **cumulative impact** in light of related past, present, and reasonably foreseeable
 5 **actions** in the area affected, to determine the level of environmental review necessary for
 6 the **action**.²¹⁹
 7
- 8 (b) For an **applicant action**, within thirty days from the receipt of the **applicant's** request for
 9 **approval** to the **approving agency**,²²⁰ through its judgment and experience, an
 10 **approving agency** shall assess the significance of the potential **impacts** of the **action**,
 11 including the overall **cumulative impact** in light of related past, present, and reasonably
 12 foreseeable **actions** in the area affected, to determine the level of environmental review
 13 necessary for the **action**.²²¹
 14
- 15 (c) If the **proposing agency** or **approving agency** determines, through its judgment and
 16 experience that the **action** will individually and **cumulatively** probably have minimal or
 17 no **significant effects**,²²² and the **action** is one that is eligible for exemption under
 18 section 11-200A-15A, then the **agency** or the **approving agency** in the case of an
 19 **applicant** may prepare an **exemption notice** in accordance with subchapter 8A.²²³
 20
- 21 (d) If the **proposing agency** or **approving agency** determines, through its judgment and
 22 experience, that the **action** is not eligible for an exemption, then the **proposing agency**
 23 shall prepare or the **approving agency** shall require the **applicant** to prepare an **EA**
 24 beginning with a **draft EA** in accordance with subchapter 9A, unless:²²⁴
 25 (1) In the course of preparing the **draft EA**, the **proposing agency** or **approving**
 26 **agency** determines, through its judgment and experience, that the **action** may
 27 have a **significant effect** and therefore require preparation of an **EIS**, then the
 28 **proposing agency** may prepare, or the **approving agency** may authorize the
 29 **applicant** to prepare an **EA** as a **final EA** to support the determination prior to

²¹⁸ Creates a new section that outlines the pathways of chapter 343, HRS environmental review: exemption, EA resulting in a FONSI or EISPN, and EIS resulting in an acceptance or nonacceptance.

²¹⁹ Modifies language from section 11-200-5(a), HAR (1996) and from section 343-5(b), HRS, and section 343-5(e), HRS.

²²⁰ Source: § 11-200-9(b)(3), HAR (1996).

²²¹ Modifies language from section 11-200-5(a), HAR (1996), section 343-5(b), HRS, and section 343-5(e), HRS.

²²² Provides the standard for an exemption from preparing an EA under subchapter 8A, formerly section 11-200-8, HAR (1996) and drawn from section 343-6(a)(2), HRS ("actions [that] will probably have minimal or no significant effects on the environment").

²²³ Sets forth the path for issuing an exemption.

²²⁴ Clarifies that where an exemption is not appropriate and an action requires chapter 343, HRS environmental review, preparation of an EA beginning with a draft EA is required unless one of two situations exist as set forth in subparagraphs (d)(1) and (d)(2).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 preparing or requiring preparation of an **EIS** in accordance with subchapter
2 10A;²²⁵ or

3 (2) The **proposing agency** or **approving agency** determines, through its judgment
4 and experience that an **EIS** is likely to be required, then the **proposing agency**
5 may choose, or an **approving agency** may authorize an **applicant** to prepare an
6 **EIS** in accordance with subchapter 10A, beginning with preparation of an
7 **EISPN**.²²⁶

8
9 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

10

²²⁵ Provides that a proposing agency may begin with a final EA or approving agency may authorize an applicant to begin with a final EA when it is anticipated that an EIS will be required, but more information is required to substantiate that determination. Based on section 343-2, HRS.

²²⁶ Provides for the direct to EIS route in section 343-5(b), HRS, for agency actions and in section 343-5(e), HRS, for applicant actions.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-14A Consideration of Previous Determinations and
 2 Accepted Statements²²⁷

3 (a) ~~[Chapter 343, HRS, provides that whenever]~~ Whenever²²⁸ an **agency** proposes to
 4 implement an **action** or receives a request for **approval**, the **agency** may consider and,
 5 when applicable and appropriate, incorporate by reference, in whole or in part, previous
 6 determinations of whether ~~[a statement]~~ an EIS is required, such as exemption notices,
 7 EAs, and EISPNs,²²⁹ and previously accepted ~~[statements]~~ EISs.

8
 9 (b) Previous determinations, EAs,²³⁰ and previously accepted ~~[statements]~~ EISs may be
 10 incorporated into an exemption notice, EA, EISPN, or EIS,²³¹ by ~~[applicants and]~~
 11 agencies and applicants²³² whenever the information contained therein is pertinent ~~[to~~
 12 ~~the decision at hand]~~²³³ and has logical relevancy and bearing to the proposed action
 13 ~~[being considered]~~²³⁴.

14
 15 (c) Agencies and applicants²³⁵ shall not, without considerable pre-examination and
 16 comparison, use past EAs,²³⁶ determinations, and ~~[previous]~~ previously accepted²³⁷
 17 ~~[statement]~~ EISs to apply to the **action** at hand. The proposed action ~~[for which a~~
 18 ~~determination is sought]~~²³⁸ shall be thoroughly reviewed prior to the use of previous
 19 determinations, EAs,²³⁹ and previously accepted ~~[statements]~~ EISs. Further, when
 20 previous determinations, EAs,²⁴⁰ and previous ~~[statements]~~ EISs are considered or
 21 incorporated by reference, they shall be substantially similar to and relevant to the
 22 proposed action ~~[then being considered]~~²⁴¹.

23 [Eff and comp ____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

²²⁷ Formerly § 11-200-13, HAR (1996). All language in this section comes from section 11-200-13, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

²²⁸ Removes the reference to chapter 343, HRS, so that the sentence is easier to read.

²²⁹ Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

²³⁰ Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

²³¹ Makes explicit which notices, documents, and determination previously accepted determinations, EAS, and EISs may be incorporated.

²³² Housekeeping (word order).

²³³ Removes unnecessary language and increases readability.

²³⁴ Removes unnecessary language and clarifies that the action referenced is the proposed action.

²³⁵ Clarifies that this subsection also applies to applicants preparing EISs.

²³⁶ Clarifies that previously completed EAs may also be considered.

²³⁷ Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.

²³⁸ Removes unnecessary language and increases readability.

²³⁹ Clarifies that previously completed EAs may also be considered.

²⁴⁰ Clarifies that previously completed EAs may also be considered.

²⁴¹ Removes unnecessary language and increases readability.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 Subchapter 8A Exempt Actions, List, and Notice

2 Requirements²⁴²

- 3 • This subchapter provides direction to an agency when it has decided that an exemption is
- 4 the appropriate level of review.
- 5 • Section 15A establishes the general types of actions under which an exemption may be
- 6 declared.
- 7 • Section 16A provides direction creating an exemption list.
- 8 • Section 17A provides direction on how to prepare an exemption notice, including when an
- 9 agency is required to consult on the exemption and publish the exemption notice in the
- 10 bulletin.

11 § 11-200A-15A General Types of Actions Eligible for Exemption²⁴³

- 12 (a) ~~[Chapter 343, HRS, states that a list of classes of actions shall be drawn up which,~~
- 13 ~~because they will probably have minimal or no significant effect on the environment, may~~
- 14 ~~be declared exempt by the proposing agency or approving agency from the preparation~~
- 15 ~~of an environmental assessment provided that agencies declaring an action exempt~~
- 16 ~~under this section shall obtain the advice of other outside agencies or individuals having~~
- 17 ~~jurisdiction or expertise as to the propriety of the exemption.] **Some actions, because**~~
- 18 ~~**they will individually and cumulatively probably have minimal or no significant effects,**~~
- 19 ~~**can be declared exempt from the preparation of an EA.**~~²⁴⁴
- 20
- 21 (b) **Actions** declared exempt from the preparation of an ~~[environmental assessment]~~ **EA**
- 22 under this ~~[section]~~ **subchapter**²⁴⁵ are not exempt from complying with any other
- 23 applicable statute or rule.²⁴⁶
- 24
- 25
- 26
- 27
- 28
- 29

²⁴² Divides 11-200-8, HAR (1996) regarding exemptions into three sections and groups them within one subchapter on exemptions.

²⁴³ Source: § 11-200-8(a), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

²⁴⁴ Incorporates language directly from section 343-6(2), HRS.

²⁴⁵ Acknowledges that the former requirements of section 11-200-8, HAR (1996) are now divided among multiple sections within one subchapter.

²⁴⁶ Source: Source: § 11-200-8(a), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (c) The following ~~[list represents exempt classes of action]~~ **general**²⁴⁷ **types**²⁴⁸ **of actions are**
 2 **eligible for exemption**.²⁴⁹
- 3 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or
 4 topographical features, involving ~~[negligible]~~ **minor**²⁵⁰ or no expansion or change
 5 of use beyond that previously existing;
- 6 (2) Replacement or reconstruction of existing structures and facilities where the new
 7 structure will be located generally on the same site and will have substantially the
 8 same purpose,²⁵¹ capacity, density, height, and dimensions as the structure
 9 replaced;
- 10 (3) Construction and location of single, new, small facilities or structures and the
 11 alteration and modification of the same and installation of new, small, equipment
 12 and facilities and the alteration and modification of same, including, but not limited
 13 to:
- 14 (A) Single-family residences less than 3,500 square feet, **as measured by the**
 15 **controlling law under which the proposed action is being considered**,²⁵²
 16 **if**²⁵³ not in conjunction with the building of two or more such units;
- 17 (B) Multi-unit structures designed for not more than four dwelling units if not in
 18 conjunction with the building of two or more such structures;
- 19 (C) Stores, offices, and restaurants designed for total occupant load of twenty
 20 ~~[persons]~~ **individuals**²⁵⁴ or ~~[less]~~ **fewer**²⁵⁵ per structure, if not in conjunction
 21 with the building of two or more such structures; and
- 22 (D) Water, sewage, electrical, gas, telephone, and other essential public utility
 23 services extensions to serve such structures or facilities; accessory or
 24 appurtenant structures including garages, carports, patios, swimming
 25 pools, and fences; and, acquisition of utility easements;
- 26 (4) Minor alterations in the conditions of land, water, or vegetation;
- 27 (5) Basic data collection, research, experimental management, and resource **and**
 28 **infrastructure testing and**²⁵⁶ evaluation activities ~~[which]~~ **that** do not result in a
 29 serious or major disturbance to an environmental resource;

²⁴⁷ Specific types are included on exemption lists and here, the categories are “general types” (formerly referred to as “classes”).

²⁴⁸ Replaces “classes” language with “types” to mirror language in section 343-6(2), HRS.

²⁴⁹ Source: § 11-200-8(a), HAR (1996).

²⁵⁰ Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

²⁵¹ “Purpose” also captures the concept of the structure or facility having the same “function” or “operation”.

²⁵² Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

²⁵³ Stylistic change; mirrors provision below (B).

²⁵⁴ Removes use of defined term “persons” to clarify that this provision relates to an occupant load of twenty individual human beings.

²⁵⁵ Housekeeping.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (6) Construction or placement of minor structures accessory to existing facilities;
 2 (7) Interior alterations involving things such as partitions, plumbing, and electrical
 3 conveyances;
 4 (8) Demolition of structures, except those structures located on any historic site as
 5 designated in the national register or Hawaii [register as provided for in the
 6 National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as
 7 amended, or chapter 6E, HRS]²⁵⁷ Register of Historic Places²⁵⁸, or that are
 8 nomi017.d²⁵⁹ for placement on the national register or the Hawai⁰¹⁶ register of
 9 Historic Places²⁶⁰ ;
 10 (9) Zoning variances except shoreline set-back variances; [and]²⁶¹
 11 [~~(10)] Continuing administrative activities including, but not limited to purchase of~~
 12 ~~supplies and personnel-related actions.]²⁶²
 13 (10) Acquisition of land and existing structures, including single or multi-unit dwelling
 14 units, for the provision of affordable housing²⁶³, involving no material change of
 15 use beyond [that] previously existing uses,²⁶⁴ and for which the legislature has
 16 appropriated or otherwise authorized funding²⁶⁵[-]; and²⁶⁶
 17
 18
 19
 20~~

²⁵⁶ Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

²⁵⁷ Unnecessary language.

²⁵⁸ Adds specificity.

²⁵⁹ Sets an identifiable administrative standard for when demolition of a historic structure may not be exempted.

²⁶⁰ Aligns language with section 343-5(a)(8)(C), HRS.

²⁶¹ Housekeeping.

²⁶² This category is now included as a *de minimus* level of routine activities and ordinary functions that when they meet the criteria specified in section 11-200A-8A do not require chapter 343, HRS environmental review. Language is still being developed to address any current items on agency exemption lists that do not appear to properly fall under the other proposed general exemption types or *de minimus* standard.

²⁶³ This existing language in section 11-200-8, HAR (1996, amended 2007) is undefined. It should be understood to mean the same as in the proposed eleventh general type for the new construction of affordable housing.

²⁶⁴ Clarifies what "that" refers to.

²⁶⁵ In 2007, the Council formally amended HAR Section 11-200-8 (1996) 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 the 2007 change.

²⁶⁶ Housekeeping.

#016

Posted by **Anonymous** on **10/30/2017** at **2:26pm**

Add "or State Inventory of Historic Properties". Many historic properties, particularly native Hawaiian archaeological sites, are on the Inventory and have never been nominated for the Register -- nor are they likely to be nominated in the foreseeable future.

Agree: 0, Disagree: 0

#017

Posted by **Anonymous** on **10/30/2017** at **2:23pm**

Comment

Eligible rather than nominated.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (11) New construction of affordable housing²⁶⁷, where affordable housing is defined by
 2 the controlling law applicable for the state or county **proposing agency or**
 3 **approving agency**²⁶⁸, that meets the following:
 4 (A) Has the use of state or county lands or funds or is within Waikiki as the
 5 sole requirements for compliance with chapter 343, HRS²⁶⁹;
 6 (B) As proposed conforms with the existing state urban land classification²⁷⁰;
 7 (C) As proposed is consistent with county zoning classifications that allow
 8 affordable housing²⁷¹; and
 9 (D) Meets applicable federal, state, and county development standards²⁷²;
 10
 11 (d) All exemptions under the [classes] types²⁷³ in this section are inapplicable when the
 12 **cumulative impact** of planned successive **actions** in the same place, over time, is

²⁶⁷ The purpose of this proposed general type of exemption would be to support the orderly development of affordable housing in urban areas where affordable housing is a planned use. Per existing HAR § 11-200-8(b) (1996) and proposed HAR § 11-200A-15A(d), exemptions 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. That is, this exemption is not automatic.

²⁶⁸ Affordable housing is defined differently by agency. This language directs agencies to use their respective law. For example, HRS § 201H-36(a)(4) states one standard: “affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development”. This would apply when the Hawaii Housing Finance and Development Corporation is approving a proposal related to that standard, while each county has its own county ordinance that would be the controlling law for the respective county agency making decisions about whether to use county lands or funds.

²⁶⁹ This clause limits the eligibility of this exemption to the case of only one or both of two possible triggers: the use of state or county lands or funds and Waikiki. The limitation to these two triggers is to keep the focus on the involvement of the state or county to support affordable housing development where the only reason someone would undergo environmental review is because government is assisting the production of affordable housing and Waikiki because it is a developed, urbanized area that meets the other criteria of being classified state urban land and zoned to allow affordable housing. The presence of other triggers such as use within a shoreline (including a Waikiki shoreline) would mean this exemption would not be applicable.

²⁷⁰ This clause limits the eligibility of this exemption to land that has already been classified by the State Land Use Commission as urban. If the proposed action involves land classified as agriculture, conservation, or rural, or includes a boundary amendment to change the classification, then the exemption would not be applicable.

²⁷¹ This clause limits the eligibility of this exemption to land that has already been zoned by the county for affordable housing. The counties organize their zoning differently so this language is meant to capture this variability. If the existing zoning for the proposed parcels do not allow affordable housing, then this exemption would not be applicable.

²⁷² This clause emphasizes that the proposed affordable housing meets the building requirements of where it is being proposed.

²⁷³ Housekeeping.

#018

Posted by **Linda M. B. Paul** on **11/26/2017** at **8:35pm**

Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

Adverse effects may include reasonably foreseeable effects caused by the proposed action that may occur later in time, be farther removed in distance, or be cumulative. (see 36 C.F.R.sections 800.5(a)(1)

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 **significant**, or when an **action** that is normally insignificant in its **impact** on the
2 **environment** may be **significant** in a particularly sensitive **environment**.²⁷⁴

3
4 (e) Any **agency**, at any time, may request that a new exemption [class] **type**²⁷⁵ be added, or
5 that an existing one be amended or deleted. The request shall be submitted to the
6 **council**, in writing, and contain detailed information to support the request as set forth in
7 section 11-201-16, **HAR**, environmental **council** rules.²⁷⁶

8

9 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

10

²⁷⁴ Source: § 11-200-8(b), HAR (1996).

²⁷⁵ Housekeeping.

²⁷⁶ Source: § 11-200-8(c), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-16A Exemption Lists²⁷⁷

- 2 (a) Each **agency** through time and experience, [~~shall~~] **may**²⁷⁸ develop its own list **consistent**
 3 **with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of**
 4 **[specific]²⁷⁹ types of actions [which fall within the exempt classes as long as these lists**
 5 **are consistent with both the letter and intent expressed in these exempt classes and**
 6 **chapter 343, HRS] that the agency considers to be included within the exempt general**
 7 **types listed in section 11-200A-15A.**^{280/281} 019
- 8
- 9 (b) These lists and any amendments to the lists shall be submitted to the **council** for review
 10 and **concurrence**. The lists shall be reviewed periodically by the **council**.^{282/283/284}
- 11
- 12 (c) **An agency may use its exemption list to exempt from preparation of an EA specific**
 13 **actions it determines to be included under the types of actions in its list, provided that**
 14 **the agency fulfills the exemption notice requirements set forth in section 11-200A-17A**
 15 **of this subchapter and chapter 343, HRS.**²⁸⁵

16

17 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

18

²⁷⁷ Source: § 11-200-8(d), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted. Subchapter 8A divides 11-200-8, HAR (1996) regarding exemptions into three sections, including this one, and groups them within one subchapter on exemptions.

²⁷⁸ Acknowledges that agencies are not required to create exemption lists and some may not regularly conduct activities that rise to the level of requiring chapter 343, HRS environmental review. An agency without an exemption list may still apply an exemption by meeting the other requirements of this subchapter.

²⁷⁹ Deletes "specific" due to the confusion created by its inclusion.

²⁸⁰ Enables an agency to create an exemption list and requires the agency to submit the list to the council for review and concurrence. Lists may include both programs and projects.

²⁸¹ Source: Source: § 11-200-8(d), HAR (1996).

²⁸² Requires any agency that creates an exemption list to submit the list to the council for review and concurrence. Lists may include both programs and projects.

²⁸³ All council meetings are subject to the Sunshine Law. Therefore, when exemption lists are submitted for council review and concurrence, the exemption lists are made public and there is an opportunity for the public to attend and provide comments at the meeting regarding the exemption list. The council publishes proposed revisions to exemption lists in the bulletin for thirty days and takes public comment received into consideration when considering concurrence with a proposed revision to an exemption list. Further, the OEQC website has a repository of documents concurred with or reviewed by the council.

²⁸⁴ Source: Source: § 11-200-8(d), HAR (1996).

²⁸⁵ Clarifies the purpose of exemption lists and that agencies may exempt both agency actions and applicant actions

#019

Posted by **Linda M. B. Paul** on **11/26/2017** at **8:52pm**

please delete the word "planned". Analysis of cumulative impacts of proposed actions should also take into consideration the impacts of previous projects that are impacting the same resource.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-17A Exemption Notices²⁸⁶

- 2 (a) Each **agency** shall ~~[maintain records of]~~ **create exemption notices for actions** that it has
 3 found to be exempt from the requirements for preparation of an ~~[environmental~~
 4 ~~assessment]~~ **EA**. ~~[and each]~~ **Each agency** shall produce the **exemption notices** for
 5 review upon request **by the public or an agency**.^{287/288}
- 6
- 7 (b) **Unless consultation and publication are not required under subsection (d), prior to**
 8 **implementing the action,**²⁸⁹ **agencies** shall consult on the propriety of an exemption and
 9 **publish exemption notices** with the **office** through the filing process set forth in
 10 **subchapter 4A.**^{290/291}
- 11
- 12 (c) **For consultation on the propriety of an exemption, an agency shall undertake an analysis**
 13 **to determine whether the action merits exemption consistent with one or several of the**
 14 **general types listed in section 11-200A-15A or the agency's exemption list produced in**
 15 **accordance with section 11-200-16A, and whether significant cumulative impacts or**
 16 **particularly sensitive environments would make the exemption inapplicable. The agency**
 17 **shall obtain the advice of other outside agencies or individuals having jurisdiction or**
 18 **expertise as to the propriety of the exemption. This analysis and consultation shall be**
 19 **documented in the exemption notice.**^{292/293}
- 20
- 21

²⁸⁶ Source: § 11-200-8(d), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted. Subchapter 8A divides 11-200-8, HAR (1996) regarding exemptions into three sections, including this one, and groups them within one subchapter on exemptions.

²⁸⁷ Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200A-9A.

²⁸⁸ Source: Source: § 11-200-8(e), HAR (1996).

²⁸⁹ Indicates that an exemption notice should be prepared, including consultation and publication (unless excepted under this section), prior to implementing the action.

²⁹⁰ Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Directs reader to the filing section for filing process requirements. Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices.

²⁹¹ Source: Proposed language in § 11-200-8(f), HAR, see v0.2.

²⁹² Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

²⁹³ This language was originally proposed in section 11-200-8(h), HAR in v0.2 and builds upon the requirement to obtain the advice of other outside agencies or individuals having jurisdiction as to the propriety of an exemption under section 11-200-8(a), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (d) Consultation regarding and publication of an **exemption notice** is not required when:
 2 (1) The **agency** has created an **exemption list** pursuant to section 11-200A-16A;
 3 (2) The **council** has concurred with the **agency's exemption list** no more than
 4 seven years before the **agency** implements the **action** or authorizes an **applicant**
 5 to implement the **action**;
 6 (3) The **action** is consistent with the letter and intent of the **agency's exemption list**;
 7 and
 8 (4) The **action** does not have any potential, individually or **cumulatively**, to produce
 9 **significant impacts**.²⁹⁴

10
 11
 12

[Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

²⁹⁴ Provides an exception to the consultation and publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 9A Environmental Assessments**

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- 13
- This subchapter provides direction to an agency when it has decided that an EA is the appropriate level of review.
 - Section 18A describes the early consultation requirement, level of detail required relative to the action being a project or program and the nature of what is proposed, and the contents requirements for a draft EA.
 - Section 19A describes the content requirements for an anticipated FONSI based on a draft EA.
 - Section 20A describes the public review and response to comments requirements for a draft EA.
 - Section 21A describes the contents of a final EA.
 - Section 22A describes the determination to issue an EISPN or FONSI and the FONSI content requirements.

14 **§ 11-200A-18A Preparation and Contents of a Draft Environmental**
15 **Assessment**²⁹⁵

- 16 (a) **A proposing agency shall, or an approving agency shall require an applicant to** [Seek]
17 **seek, at the earliest practicable time, the advice and input of the county agency**
18 **responsible for implementing the county's general plan for each county in which the**
19 **proposed action is to occur, and consult with other agencies having jurisdiction or**
20 **expertise as well as those citizen groups and individuals [which] that the proposing**
21 **agency or applicant reasonably believes [to] may**²⁹⁶ **be affected.**²⁹⁷
22
- 23 (b) **The scope of the draft EA may vary with the scope of the proposed action and its**
24 **impact, taking into consideration whether the action is a project or a program.**²⁹⁸ **Data**
25 **and analyses in a draft EA shall be commensurate with the importance of the impact,**
26 **and less important material may be summarized, consolidated, or simply referenced. A**
27 **draft EA shall indicate at appropriate points in the text any underlying studies, reports,**

²⁹⁵ Formerly § 11-200-10, HAR (1996), which addressed the contents of both a draft and final EA. The provisions related to the contents a draft EA are retained here. Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from section 11-200-10, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

²⁹⁶ Housekeeping.

²⁹⁷ Source: § 11-200-9(a)(1) and §11-200-9(b)(1), HAR (1996).

²⁹⁸ Version 0.3 proposes definitions for project and program, and this section provides how the distinction between a project and program influences the style of the document and the breadth and specificity of analysis and information contained therein.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 and other information obtained and considered in preparing the **draft EA**, including cost
 2 benefit analyses and reports required under other legal authorities.^{299/300}
 3
 4 (c) The level of detail in a **draft EA** may be more broad for **programs** or components of a
 5 **program** for which site-specific **impacts** are not discernible, and shall be more specific
 6 for components of the **program** for which site-specific, **project-level impacts** are
 7 discernible. A **draft EA** for a **program** may, where necessary, omit evaluating issues that
 8 are not yet ready for decision at the **project**³⁰¹ level. Analysis of the **program** may be
 9 based on conceptual information in some cases and may discuss in general terms the
 10 constraints and sequences of events likely to result in any narrowing of future options. It
 11 may present and analyze in general terms hypothetical scenarios that are likely to
 12 occur.^{302/303}
 13
 14 (d) A **draft EA** shall contain, but not be limited to, the following information:³⁰⁴
 15 (1) Identification of the **applicant** or **proposing agency**;³⁰⁵
 16 (2) For **applicant actions**,³⁰⁶ [~~Identification~~] identification of the **approving agency** [;
 17 if applicable];³⁰⁷
 18 (3) List of all **required**³⁰⁸ **permits** and **approvals** (State, federal, county) [**required**
 19 and, for **applicants**, identification of which **approval** necessitates chapter 343,
 20 **HRS, environmental review**^{309, 310}

²⁹⁹ Paragraph (b) is a modification of section 11-200-19, HAR (1996) to apply the style guidelines for an EIS to an EA. It mirrors the language included in the proposed 11-200A-24A for the contents of a draft EIS, and provides that the scope and specificity within an EA will be commensurate with the scope of the action and the degree of specificity to which impacts are discernible at the time of preparation.

³⁰⁰ Because a final EA is a draft EA revised to incorporate responses to comments, this subsection also applies to the style and breadth and specificity of analysis and information contained in a final EA.

³⁰¹ Clarifies that the programmatic EA may omit issues that are not ripe for discussion at a more narrow scale. In the case of such an omission, a subsequent project may require its own chapter 343, HRS determination. Proposed subchapter 7A assists with understanding this situation.

³⁰² Distinguishes between the level of detail and style of assessment for programs, which may be more broad and conceptual in nature and that for projects, which are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of segmentation and acknowledges the tension between earliest practicable time to begin environmental review with project specificity. This paragraph mirrors the proposed paragraph in section 11-200A-24A regarding contents of a draft EIS.

³⁰³ Because a final EA is a draft EA revised to incorporate responses to comments, this subsection also applies to the style and breadth and specificity of analysis and information contained in a final EA.

³⁰⁴ Source: § 11-200-10, HAR (1996).

³⁰⁵ Source: § 11-200-10(1), HAR (1996).

³⁰⁶ Clarifies when identification of the approving agency is necessary.

³⁰⁷ Source: § 11-200-10(2), HAR (1996).

³⁰⁸ Housekeeping. Moves the word required from the end of the clause to before the word "permits".

³⁰⁹ Adds identification of the approval that combined with a trigger from 343-5 requires an applicant to undergo chapter 343, HRS review.

³¹⁰ Source: § 11-200-10(11), HAR (1996).

#020

Posted by **Linda M. B. Paul** on **11/26/2017** at **9:20pm**

(5) General description of the actions ecological, aesthetic, historic, technical, economic, social, cultural and other environmental characteristics.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (4) Identification of **agencies**, citizen groups, and individuals consulted in [making]
 2 preparing³¹¹ the **draft [assessment] EA**.³¹²
- 3 (5) General description of the **action**'⁰²³technical, economic, social, **cultural**³¹³ and
 4 environmental characteristics.³¹⁴ 022
- 5 (6) Summary description of the affected **environment**, including suitable and
 6 adequate regional, location and site maps such as Flood Insurance Rate Maps,
 7 Floodway Boundary Maps, or United States Geological Survey topographic maps; 021
- 8 (7) Identification and [summary] **analysis**³¹⁵ of **impacts** and alternatives considered;
- 9 (8) Proposed mitigation measures.³¹⁶
- 10 (9) **Agency or approving agency** [determination or, for draft environmental
 11 assessments only an] anticipated determination, including findings and reasons
 12 supporting the anticipated **FONSI**, if applicable; and ³¹⁷
- 13 (10) Written comments and responses to the comments [under] **received and made**
 14 **pursuant to**³¹⁸ the early consultation provisions of [~~sections 11-200-9(a)(1), 11-~~
 15 ~~200-9(b)(1), or 11-200-15,]~~ **subsection (a)** and statutorily prescribed public review
 16 periods.³¹⁹
- 17
- 18 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)
- 19

³¹¹ Uses more accurate language (“preparing” rather than “making”) that is consistent with language in the rules.

³¹² Source: § 11-200-10(3), HAR (1996).

³¹³ Aligns provision with content requirement of a draft EIS.

³¹⁴ Source: § 11-200-10(4), HAR (1996).

³¹⁵ 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 enough information to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

³¹⁶ Source: § 11-200-10(7), HAR (1996).

³¹⁷ Source: merges § 11-200-10(8) and (9), HAR (1996).

³¹⁸ Housekeeping.

³¹⁹ Source: § 11-200-10(12), HAR (1996).

#021

Posted by **Eileen Kechloian** on **11/23/2017** at **3:45pm**
Comment

An Aquifer Map of aquifers under or near the project/program.

Agree: 0, Disagree: 0

#022

Posted by **Linda M. B. Paul** on **11/26/2017** at **10:16pm**

(5) General description of the action's effects on ecological, aesthetic, historic, cultural, economic, social, health, or other environmental resources whether direct, indirect, or cumulative.

Reason: compatible with NEPA standards

Agree: 0, Disagree: 0

#023

Posted by **Linda M. B. Paul** on **11/26/2017** at **9:16pm**

Please add as a footnote that "these regulations intend to exempt only very minor projects from the ambit of Chapter 343" (See Kahana Sunset, 86 Haw. 66 (1997): Operational support to accommodate a project, including roadways, drainage improvements, utilities and public services, are sufficient to trigger the need for an EA. See also Superferry 1, 115 Haw. 299, 342 (2007)

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-19A Notice of Determination for Draft Environmental
 2 Assessments³²⁰

3 (a) After:³²¹

4 (1) ~~[preparing]~~ **Preparing, or causing to be prepared,**³²² ~~[an environmental~~
 5 ~~assessment] a draft EA, [and]~~³²³

6 (2) ~~[reviewing]~~ **Reviewing any public and agency comments, [if any,] and**³²⁴

7 (3) ~~[applying]~~ **Applying** the significance criteria in section ~~[11-200A-12]~~ **11-200A-**
 8 **12A[1];**

9 **if the proposing agency or the approving agency anticipates that the proposed action**
 10 **is not likely to have a significant effect, [it] the proposing agency or approving**
 11 **agency**³²⁵ **shall issue a notice of [determination which shall be]**³²⁶ **an anticipated**
 12 **[negative declaration] FONSI subject to the public review provisions of section [11-200-**
 13 **9-4] 11-200A-20A.**³²⁷

14
 15 (b) **The proposing agency or approving agency shall [also] file [such] the**³²⁸ **notice of**
 16 **anticipated determination when applicable**³²⁹ **and supporting draft EA**³³⁰ **with the office**
 17 **as early as possible in accordance with subchapter 4A**³³¹ **after the determination is made**
 18 **pursuant to and in accordance with [section 11-200-9] this subchapter**³³² **and the**
 19 **requirements in subsection (c). [along with four copies of the supporting environmental**
 20 **assessment. In addition to the above, the anticipated negative declaration determination**
 21 **for any applicant action shall be mailed to the requesting applicant by the approving**

³²⁰ Formerly § 11-200-11.1, HAR (1996). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from section 11-200-11.1, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

³²¹ Breaks out three conditions from § 11-200-11.1(a) into three items and capitalizes each of the numbered items to make the language clearer.

³²² Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

³²³ Housekeeping. Specifies draft EA.

³²⁴ Housekeeping.

³²⁵ Housekeeping.

³²⁶ Removes redundant language.

³²⁷ Source: § 11-200-11.1, HAR (1996).

³²⁸ Housekeeping.

³²⁹ Clarifies that the FONSI is an anticipated determination.

³³⁰ Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

³³¹ Incorporates filing requirements from subchapter 4A.

³³² Housekeeping.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 agency.]³³³ For applicant actions, the approving agency shall also send the anticipated
 2 FONSI to the applicant.^{334/335}

3
 4 (c) The notice of an anticipated FONSI determination shall [indicate] include in a concise
 5 manner:

- 6 (1) Identification of the³³⁶ [applicant or] proposing agency or applicant³³⁷;
 7 (2) Identification of the approving agency or³³⁸ accepting authority;
 8 (3) [Brief] A brief³³⁹ description of the³⁴⁰ [proposed] action;
 9 (4) [Determination] The anticipated FONSI³⁴¹;
 10 (5) Reasons supporting the³⁴² anticipated FONSI [determination]; and
 11 (6) [Name] The name³⁴³, title email address, physical³⁴⁴ address, and phone number
 12 of [a contact person] an individual representative of the proposing agency or
 13 applicant who may be contacted for further information.^{345/346}

14
 15 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

16

³³³ Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

³³⁴ 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).

³³⁵ Source: § 11-200-11.1(a)

³³⁶ Housekeeping.

³³⁷ Parallels similar sentences in the regulations that reference the “proposing agency” first and the “applicant” second.

³³⁸ 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.

³³⁹ Housekeeping.

³⁴⁰ Housekeeping.

³⁴¹ Housekeeping.

³⁴² Housekeeping.

³⁴³ Housekeeping.

³⁴⁴ Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

³⁴⁵ Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant’s organization who can provide answers.

³⁴⁶ Source of (c)(1)-(6): modified § 11-200-11.1(c)(1)-(6).

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-20A Public Review & Response Requirements for Draft
 2 Environmental Assessments for Anticipated Findings of No
 3 Significant Impact & Addenda to Draft Environmental
 4 Assessments³⁴⁷

- 5 (a) This section shall apply only if a **proposing agency** or an **approving agency** anticipates
 6 a ~~[negative declaration]~~ **FONSI** determination for a proposed **action**³⁴⁸ and ~~[that]~~ **the**
 7 **proposing agency** **or the applicant proposing the action**³⁴⁹ has completed the **draft EA**
 8 requirements of ~~[section 11-200-7(a) paragraphs (1), (2), (3), (4), (5), (6) and (7), or~~
 9 ~~section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6), as appropriate]~~ **sections 11-**
 10 **200A-18A and 11-200-19A**.³⁵⁰
 11
- 12 (b) ~~[The period for public review and for submitting written comments for both agency actions~~
 13 ~~and applicant actions shall begin as of the initial issue date that notice of availability of the~~
 14 ~~draft environmental assessment was published in the periodic bulletin and shall continue~~
 15 ~~for a period of thirty days.]~~ **Unless mandated otherwise by statute**³⁵¹, **the period for public**
 16 **review and for submitting written comments shall be thirty days**³⁵² **from the date of**
 17 **publication of the draft EA in the bulletin**. Written comments ~~[to the proposing agency or~~
 18 ~~approving agency, whichever is applicable, with a copy of the comments to the applicant~~
 19 ~~or proposing agency]~~ shall be received **by**³⁵³ or postmarked to the **proposing agency** or
 20 **approving agency** **and applicant**³⁵⁴ ~~[;]~~ within the thirty-day period. Any comments
 21 outside of the thirty-day period need not be ~~[considered or]~~³⁵⁵ responded to nor
 22 considered **in the final EA**.
 23
- 24 (c) For **agency actions**, the **proposing agency** **shall, and for applicant actions, the**
 25 **applicant** shall **;** respond in writing to all comments received or postmarked during the

³⁴⁷ Formerly § 11-200-9.1, HAR (1996). All language in this section comes from section 11-200-9.1, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

³⁴⁸ If an agency does not anticipate a FONSI, then it will likely move to or authorize an applicant to directly move to an EIS. This requires the approving agency to use its judgment and wisdom. Although an agency may anticipate a FONSI, the FONSI may not be issued until an EA is completed.

³⁴⁹ Reflects change that the applicant, rather than the approving agency, prepares the EA.

³⁵⁰ Deletes unnecessary references because in v0.3 the contents of a draft EA have been merged into one section.

³⁵¹ Acknowledges that the public review period may be altered for certain actions by statute. For example, the development or expansion of forensic facilities of the department of health or in-state correctional facilities have 60-day comment periods for draft EAs (and EISs), per sections 334-2.7 and 353-16.35, HRS, respectively.

³⁵² Refer to proposed § 11-200A-3A, Computation of Time for calculating thirty days.

³⁵³ Stylistic change.

³⁵⁴ Reflects change that the applicant, rather than the approving agency, prepares the EA.

³⁵⁵ Stylistic change.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 ~~[thirty-day]~~ **statutorily mandated**³⁵⁶ review period, incorporate comments **into the final**
 2 **EA**³⁵⁷ as appropriate,³⁵⁸ and ~~[append]~~ **include** the comments and responses in the final
 3 ~~[environmental assessment]~~ **EA**. ~~[Each response shall be sent directly to the person~~
 4 ~~commenting, with copies of the response also sent to the office.]~~ **If a number of**
 5 **comments are identical or very similar, the proposing agency or applicant may group**
 6 **the comments and prepare a single standard response for each group. When grouping**
 7 **comments, the name of each commenter, when known, shall be included along with the**
 8 **grouped response.**³⁵⁹ **One representative copy of comments that are identical or very**
 9 **similar may be included in the final EA with a list of the names of each commenter, when**
 10 **known, that submitted the identical comments rather than reproducing each individual**
 11 **comment.**³⁶⁰ **All individual comments and representative copies of identical or very similar**
 12 **comments must be included in the final EA regardless of whether the agency or**
 13 **applicant believes the comments merit individual discussion in the body of the final**
 14 **EA.**³⁶¹
- 15
- 16 ~~[(d)]~~ ~~[For applicant actions, the applicant shall respond in writing to all comments received~~
 17 ~~or postmarked during the thirty-day review period and the approving agency shall~~
 18 ~~incorporate or append the comments and responses in the final environmental~~
 19 ~~assessment. Each response shall be sent directly to the person commenting with a copy~~
 20 ~~to the office. A copy of each response shall be sent to the approving agency for its timely~~
 21 ~~preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and~~
 22 ~~11-200-11.1 or 11-200-11.2.]~~^{362/363}

³⁵⁶ Acknowledges that other statutes may require comment periods of varying lengths.

³⁵⁷ Clarifies that the comments are included in the final EA.

³⁵⁸ Housekeeping.

³⁵⁹ Allows agencies and applicants to respond within EAs and EISs to the issues raised within comment letters without sending letters directly to each commenter. This is intended to modernize and simplify the environmental review process. Commenters must still be identified in the response within the EA or EIS. The widespread availability of electronic documents to commenters relieves the necessity of sending individual letters to commenters to ensure that they receive notification that their comment has been considered and responded to.

³⁶⁰ Reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. Applies specifically to form letters and petitions.

³⁶¹ 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 identical or similar comments. Because individual responses would no longer be sent, the requirement for office to receive a copy of the response is no longer relevant.

³⁶² Under Act 192 (2012), applicants prepare their own documents, so the timely preparation of an EA or EIS by the approving agency is no longer applicable.

#024

Posted by **Raelyn Reyno Yeomans** on **10/30/2017** at **12:01pm**

Comment

I am opposed to changes on page 58 which would allow the applicant or proposing agency to group comments and answer as a group. This is too subjective and favors the proposing agency or applicant enormously! It is inappropriate to place so much discretion in the proposing agency or applicant's hands to determine what is "identical or very similar"!

Comments must be answered individually and the answer sent to each individual.

The proposed changes on page 58 are detrimental to the public and place barriers in the way of the public to get direct answers and to have **TIMELY ACCESS** to the responses of the proposing agency or applicant.

Agree: 0, Disagree: 0

Reply by **Anonymous** on **11/09/2017** at **7:26pm**

Comment

I agree with this comment. There is a need for an independent determination of what is considered "identical or very similar".

Agree: 0, Disagree: 0

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1
- 2 [(e)](d) An **addendum** document to a **draft** [~~environmental assessment~~] **EA** shall reference the
- 3 original **draft** [~~environmental assessment~~] **EA** it attaches to and shall comply with all
- 4 applicable **filing**, public review and comment requirements set forth in [~~sections 11-200-3~~
- 5 ~~and 11-200-9~~] **subchapters 4A and 9A**³⁶⁴.
- 6
- 7 [Eff and comp _____] (Auth: HRS §§ 343-3, 343-5, 343-6) (Imp: HRS §§ 343-3, 343-5, 343-6)
- 8

³⁶³ This paragraph is merged into the preceding paragraph (c). Applicants and agencies must meet the same criteria when responding to public comments. Therefore, this paragraph is deleted and the paragraph outlining agency requirements is amended to include applicants


³⁶⁴ Updates references to filing and publication of the addendum and public review of draft environmental assessments.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 §11-200A-21A Contents of a Final Environmental Assessment³⁶⁵

2 ~~[The proposing agency or approving agency shall prepare any draft or final environmental~~
 3 ~~assessment of each proposed action and determine whether the anticipated effects constitute a~~
 4 ~~significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental~~
 5 ~~assessment]~~³⁶⁶ A final 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 ~~preparing]~~³⁶⁷ the ~~[assessment]~~ EA;
- 10 (4) General description of the **action's** technical, economic, social, **cultural**³⁶⁸ and  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 maps;
- 15 (6) Identification and ~~[summary]~~ **analysis**³⁶⁹ of **impacts** and alternatives considered;
- 16 (7) Proposed mitigation measures;
- 17 (8) **The [Agency] agency determination and the findings and reasons supporting the**
 18 **determination** ~~[or, for draft environmental assessments only, an anticipated~~
 19 ~~determination]~~³⁷⁰;
- 20 ~~[(9) [Findings and reasons supporting the agency determination or anticipated~~
 21 ~~determination;]]~~³⁷¹
- 22 ~~[(10) [Agencies to be consulted in the preparation of the EIS, if an EIS is to be~~
 23 ~~prepared];~~
- 24 (9) List of all **required**³⁷² permits and **approvals** (State, federal, county) ~~[required]~~
 25 **and, for applicants, identification of which discretionary permit necessitates**
 26 **chapter 343, HRS, environmental review**³⁷³; and

³⁶⁵ Formerly § 11-200-10, HAR (1996). All language in this section comes from section 11-200-10, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

³⁶⁶ Other sections of this chapter set forth the requirements for when an EA shall be required and do not need to be repeated here. This section specifies what a draft and final EA must include when such documents are required.

³⁶⁷ Uses more accurate language ("preparing" rather than "making") that is consistent with language in the rules.

³⁶⁸ Aligns provision with content requirement of a draft EIS.

³⁶⁹ 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 discussion detailed enough to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

³⁷⁰ Stylistic change to improve clarity and removes reference to draft EA requirements. Merges requirement to include both the determination and the reasons supporting the determination.

³⁷¹ Merged into preceding subparagraph (8).

³⁷² Housekeeping. Moves the word required from the end of the clause to before the word "permits".

#025

Posted by **Linda M. B. Paul** on **11/26/2017** at **10:43pm**

General description of the action's ecological, aesthetic, historic, cultural, economic, social, health or other environmental characteristics, including direct, indirect, or cumulative.

See e.g. 36 C.F.R. section 800.5(a)(1)

Agree: 0, Disagree: 0

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (10) Written comments and responses to the comments [~~under~~ **received pursuant**
 2 **to**³⁷⁴ the early consultation provisions [~~of sections 11-200-9(a)(1), 11-200-9(b)(1),~~
 3 ~~or 11-200-15~~], and statutorily prescribed public review periods.

4

5 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

6

³⁷³ Adds identification of the approval that combined with a trigger from 343-5 requires an applicant to undergo chapter 343, HRS review.

³⁷⁴ Housekeeping.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-22A Notice of Determination for Final Environmental
 2 Assessments³⁷⁵

- 3 (a) After:³⁷⁶
- 4 (1) [~~preparing~~] **Preparing, or causing to be prepared,**³⁷⁷ a final [environmental
 5 assessment] **EA,**
- 6 (2) [~~reviewing~~] **Reviewing any** public and **agency** comments, [if any,] **and**³⁷⁸
- 7 (3) [~~applying~~] **Applying** the significance criteria in section [11-200-12] **11-200A-12A**³⁷⁹,
 8 the **proposing agency** or the **approving agency** shall issue [one of the following
 9 notices] **a notice**³⁸⁰ of [determination] **a FONSI or EISPN**³⁸¹ in accordance with [section
 10 11-200-9(a) or 11-200-9(b)] **subchapter 9A**³⁸², and file the notice with the **office in**
 11 **accordance with subchapter 4A.**³⁸³ [~~addressing the requirements in subsection (c), along~~
 12 ~~with four copies of the supporting final environmental assessment, provided that in~~
 13 ~~addition to the above, all notices of determination for any applicant action shall be mailed~~
 14 ~~to the requesting applicant by the approving agency.]³⁸⁴ **For applicant actions, the**
 15 **approving agency shall issue a determination within thirty days of receiving the final**
 16 **EA.**³⁸⁵~~
- 17
- 18 (b) [~~Negative declaration~~] **FONSI.** If the **proposing agency** or **approving agency**
 19 determines that a proposed **action** is not likely to have a **significant effect**, it shall issue
 20 a notice of [~~determination which shall be~~] a [~~negative declaration,~~] **FONSI.** [~~and the~~
 21 ~~proposing agency or approving agency shall file such notice with the office as early as~~
 22 ~~possible after the determination is made pursuant to and in accordance with section 11-~~
 23 ~~200-9~~³⁸⁶.
- 24

³⁷⁵ Formerly § 11-200-11.2, HAR (1996). All language in this section comes from section 11-200-11.2, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

³⁷⁶ Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.

³⁷⁷ Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

³⁷⁸ Housekeeping.

³⁷⁹ Updates section reference.

³⁸⁰ Housekeeping.

³⁸¹ Clarifies which of two determinations is to be issued.

³⁸² Updates reference to subchapter 9A, which encompasses the process and requirements for preparation of an environmental assessment previously included in sections 11-200-9(a) and 11-200-9(b), HAR (1996).

³⁸³ Directs to the subchapter on filing requirements.

³⁸⁴ This requirement is now addressed in subchapter 4A, Filing and Publication.

³⁸⁵ Source: modified § 11-200-9(b)(8), HAR (1996).

³⁸⁶ Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

#026

Posted by **Linda M. B. Paul** on **11/26/2017** at **10:53pm**

Not sure where this should go, but the Environmental Court order filed on May 27, 2016, in cv 15-1-0890-05 KTN stated the following: "The FONSI, could, under section 343(g), be relied on in any future proposed action provided that it would only be used in an environmental assessment (EA) for that subsequent particular action. So there has to be a subsequent EA if there is another application filed for a project. The new application mus go through the same review process under section 343-5. The new EA for any new application will result in a new finding of either no significant impact, a FONSI again, or it could result in an EIS being required under subsection 5(c). Whether this FONSI in this action is recycled or reused, in whole or in part, in any future EA for a future action, in this Court's view, that finding will be subject to its own judicial review under section 343-7 for that particular action."

Agree: 0, Disagree: 0

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (c) [~~Environmental impact statement preparation notice~~] **EISPN**. If the **proposing agency** or
 2 **approving agency** determines that a proposed **action** may have a **significant effect**, it
 3 shall issue a notice of [~~determination which shall be~~] an [~~environmental impact statement~~
 4 ~~preparation notice~~] **EISPN** [~~and such notice shall be filed as early as possible after the~~
 5 ~~determination is made pursuant to and in accordance with section 11-200-9~~]³⁸⁷.
- 6
- 7 (d) **The proposing agency or approving agency shall file in accordance with subchapter**
 8 **4A the notice and the supporting final EA with the office as early as possible after the**
 9 **determination is made, addressing the requirements in subsection (e).**³⁸⁸ **For applicant**
 10 **actions, the approving agency shall send the notice of determination for an EISPN or**
 11 **FONSI to the applicant.**³⁸⁹
- 12
- 13 [(e)] [~~The office shall publish the appropriate notice of determination in the periodic bulletin~~
 14 ~~following receipt of the documents in subsection (a) by the office in accordance with~~
 15 ~~section 11-200-3.~~]³⁹⁰
- 16
- 17 (e) The notice of [~~determination~~] a **FONSI**³⁹¹ shall indicate in a concise manner:
- 18 (1) Identification of **the**³⁹² **applicant or proposing agency**;
- 19 (2) Identification of **the approving agency or**³⁹³ **accepting authority**;
- 20 (3) [~~Brief~~] **A brief**³⁹⁴ description of **the**³⁹⁵ proposed **action**;
- 21 (4) [~~Determination~~] **The determination**³⁹⁶;
- 22 (5) Reasons supporting **the**³⁹⁷ determination; and
- 23 (6) [~~Name~~] **The name**³⁹⁸, **title, contact information, including the email address,**
 24 **physical**³⁹⁹ address, and phone number of [~~a contact person~~] **an individual**

³⁸⁷ Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

³⁸⁸ 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. Filing and publication requirements are included in subchapter 4A.

³⁸⁹ 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).

³⁹⁰ Deletes language that is now included in subchapter 4A on Filing and Publication.

³⁹¹ Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200A-23A.

³⁹² Housekeeping.

³⁹³ 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.

³⁹⁴ Housekeeping.

³⁹⁵ Housekeeping.

³⁹⁶ Housekeeping.

³⁹⁷ Housekeeping.

³⁹⁸ Housekeeping.

³⁹⁹ Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

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Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 representative of the proposing agency or applicant who may be contacted for
 2 further information.^{400/401}

3 The notice of determination for an EISPN shall be prepared pursuant to section 11-200A-
 4 23A.⁴⁰²

5
 6 ~~[(d)]—[When an agency withdraws a determination pursuant to its rules, the agency shall~~
 7 ~~submit to the office a written letter informing the office of its withdrawal. The office shall~~
 8 ~~publish notice of agency withdrawals in accordance with section 11-200-3.]~~⁴⁰³

9
 10 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

11

⁴⁰⁰ Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant's organization who can provide answers.

⁴⁰¹ Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

⁴⁰² 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.

⁴⁰³ Deletes language that has been moved to the Filing and Publication Requirements detailed in section 11-200A-5A.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 10A Environmental Impact Statements**

- 2
- 3
- 4
- 5
- 6
- 7
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- 12
- 13
- This subchapter provides direction to an agency when it has decided that an EIS is the appropriate level of review. It breaks up the steps into separate sections.
 - Section 23A describes the contents of an EISPN, early consultation requirement, the EIS public scoping meeting, and the comment period following the publication of an EISPN.
 - Section 24A describes the content requirements for a draft EIS, the detail required relative to the action being a project or program and the nature of what is proposed, and the response requirements to comments received during the thirty-day scoping period.
 - Section 25A describes the public review requirements for a draft EIS.
 - Section 26A describes the response to comments received on a draft EIS.
 - Section 27A describes the content requirements for a final EIS.
 - Section 28A describes the criteria for an acceptance determination and steps following an acceptance or nonacceptance determination.

14 **§ 11-200A-23A Consultation Prior to Filing a Draft Environmental**
15 **Impact Statement**⁴⁰⁴

- 16 (a) An EISPN, including one resulting from an agency authorizing the preparation of an EIS
17 without first requiring an EA, shall indicate in a concise manner:
- 18 (1) Identification of the proposing agency or applicant;
- 19 (2) Identification of the accepting authority;
- 20 (3) List of all required permits and approvals (State, federal, county) and, for
21 applicants, identification of which approval necessitates chapter 343, HRS,
22 environmental review^{405/406};
- 23 (3) The determination to prepare an EIS⁴⁰⁷;
- 24 (4) Reasons supporting the determination to prepare an EIS⁴⁰⁸;
- 25 (5) A description of the proposed action and its location;
- 26 (6) A description of the affected environment and include regional, location, and site
27 maps;
- 28 (7) Possible alternatives to the proposed action;

⁴⁰⁴ Formerly § 11-200-15, HAR (1996). All language in this section comes from section 11-200-15, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

⁴⁰⁵ Adds identification of permits and approvals, and for applicants which approval that combined with a trigger from section 343-5, HRS requires an applicant to undergo environmental review.

⁴⁰⁶ This is a requirement in preparation of an EA. Because an agency may begin with or authorize an applicant to begin with an EISPN without preparation of an EA, to ensure that the public and decision makers are provided this information it is included as a content requirement of an EISPN.

⁴⁰⁷ Distinguishes “the determination” from other determinations, such as a FONSI.

⁴⁰⁸ Distinguishes “the determination” from other determinations, such as a FONSI.

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- 1 (8) The proposing agency's or applicant's proposed scoping process, including
 2 when and where the EIS public scoping meeting or meetings will be held; and
 3 (9) The name, title, contact information, including the email address, physical
 4 address, and phone number of an individual representative of the proposing
 5 agency or applicant who may be contacted for further information.^{409/410}
 6
- 7 (b) In the preparation of a draft **EIS**, **proposing agencies** and **applicants** shall consult all
 8 appropriate **agencies**, ~~[noted in section 11-200-10(10), and other]~~ including the county
 9 agency responsible for implementing the county's general plan for each county in which
 10 the proposed action is to occur and agencies having jurisdiction or expertise, as well as
 11 those citizen groups, and concerned individuals ~~[as noted in sections 11-200-9 and 11-~~
 12 ~~200-9.4]~~ that the proposing agency reasonably believes to be affected.⁴¹¹ To this end,
 13 **agencies** and **applicants** shall endeavor to develop a fully acceptable draft⁴¹² **EIS** prior 027
 14 to the time the draft⁴¹³ **EIS** is filed with the **office**, through a full and complete consultation
 15 process, and shall not rely solely upon the review process to expose environmental
 16 concerns.
 17
- 18 (c) Upon publication of ~~[a preparation notice]~~ an EISPN in the **periodic bulletin**, agencies,
 19 groups, or individuals shall have a period of thirty days from the initial ~~[issue]~~
 20 publication⁴¹⁴ date ~~[in which to request to become a consulted party and]~~⁴¹⁵ to make
 21 written comments regarding the environmental **effects** of the proposed **action**. ~~[Upon~~
 22 ~~written request by the consulted party and upon good cause shown,]~~ With good cause,
 23 the **approving agency** or **accepting authority** may extend the period for comments for a
 24 period not to exceed thirty additional⁴¹⁶ days.⁴¹⁷ Written comments and responses to the

⁴⁰⁹ Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant's organization who can provide answers.

⁴¹⁰ Subsection (a)(1)-(9) creates a new standard set of content for an EISPN determination that shall be applied regardless of how one arrives at conducting an EIS (e.g., resulting from an EA or directly preparing an EIS).

⁴¹¹ Deletes reference to the specific sections within HAR chapter 11-200 (1996), and replaces it with the language it references from section 11-200-9(a)(1), HAR (1996).

⁴¹² Clarifies that the document is a draft EIS.

⁴¹³ Clarifies that the document is a draft EIS.

⁴¹⁴ Clarifies that thirty-day time period begins upon publication of the EISPN.

⁴¹⁵ Removes the requirement for an individual to become a consulted party to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

⁴¹⁶ Clarifies that the days are in addition to the first thirty-day period.

#027

Posted by **Anonymous** on **11/18/2017** at **4:10pm**

Comment

should include "Or applicant reasonably believes to be affected."

Agree: 0, Disagree: 0

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029

1 ~~substantive comments shall be included in the draft EIS pursuant to section 11-200A-~~
 2 ~~24A).~~⁴¹⁸

3
 4 (d) ~~[At the discretion of the proposing agency or an applicant, a]~~ **An EIS public scoping**
 5 **meeting** ~~[to receive comments on the final environmental assessment (for the EIS~~
 6 ~~preparation notice determination) setting forth]~~ **addressing** the scope of the draft EIS
 7 ~~[may]~~ **shall**⁴¹⁹ be held within the thirty-day public review and comment period in
 8 subsection ~~[(b)]~~ **(c)**⁴²⁰, ~~provided that the proposing agency or applicant shall treat oral~~
 9 ~~and written comments received at such a meeting as indicated in subsection (d)]~~⁴²¹.

028

10
 11 ~~[(e)]~~ ~~[Upon receipt of the request, the proposing agency or applicant shall provide the~~
 12 ~~consulted party with a copy of the environmental assessment or requested portions~~
 13 ~~thereof and the environmental impact statement preparation notice. Additionally, the~~
 14 ~~proposing agency or applicant may provide any other information it deems necessary.~~
 15 ~~The proposing agency or applicant may also contact other agencies, groups, or~~
 16 ~~individuals which it feels may provide pertinent additional information.]~~⁴²²

17
 18 ~~[(d)]~~ ~~[Any substantive comments received by the proposing agency or applicant pursuant to~~
 19 ~~this section shall be responded to in writing and as appropriate, incorporated into the draft~~
 20 ~~EIS by the proposing agency or applicant prior to the filing of the draft EIS with the~~
 21 ~~approving agency or accepting authority. Letters submitted which contain no comments~~
 22 ~~on the projects but only serve to acknowledge receipt of the document do not require a~~
 23 ~~written response. Acknowledgement of receipt of these items must be included in the final~~
 24 ~~environmental assessment or final statement.]~~⁴²³

25 ~~[Eff and comp _____]~~ (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)

⁴¹⁷ Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party to request an extension to the comment period.

⁴¹⁸ Provides that written comments and responses to the comments are required and are to be prepared and included in the draft EIS pursuant to section 11-200A-24A.

⁴¹⁹ Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

⁴²⁰ Housekeeping.

⁴²¹ Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting and removes the preparer's recording of individual oral comments.

⁴²² All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations to consult with or share documents with outside parties.

⁴²³ The contents of this paragraph are now included in section 11-200A-24A regarding Content Requirements of a Draft EIS.

#028

Posted by **Anonymous** on **11/09/2017** at **7:37pm**

Question

How can the public make comments if the scope of the review is not yet determined? Would it not be better to have public scoping meetings before any comment period?

Agree: 0, Disagree: 0

#029

Posted by **nyuen** on **10/30/2017** at **3:12pm**

Comment

The purpose of the Hawaii Environmental Protection Act is to ensure environmental concerns are given appropriate consideration in decision making. As such, developers need to address each public comment to mitigate the negative effects of the proposed development. Approving the proposed change will give developers a way to get out of their obligations to the larger community. I strongly oppose the proposed changes.

Agree: 0, Disagree: 0

#030

Posted by **E Kechloian** on **11/18/2017** at **4:33pm**

Comment

The words "substantive comments" needs to be defined. It should mean any comments that are relating to the project or program. All form letters and petitions should be answered as well but not necessarily individually, but should require printing so the interested parties can see why there is only one response needed. All comments need to be included in EISPNS, DEISs and FEISs. Respect for the commenters should be shown by at a minimum of including their comments in written form, petitions and form letters.

Agree: 0, Disagree: 0

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1 § 11-200A-24A Content Requirements; Draft Environmental
 2 Impact Statement⁴²⁴

- 3 (a) The draft **EIS**, at a minimum, shall contain the information required in this section. The
 4 contents shall fully declare the environmental implications of the proposed action and
 5 shall discuss all ~~[relevant and feasible]~~ **reasonably foreseeable**⁴²⁵ consequences of the
 6 action. In order that the public can be fully informed and that the **agency** can make a
 7 sound decision based upon the full range of responsible opinion on environmental
 8 **effects**, ~~[a statement]~~ **an EIS** shall include responsible opposing views, if any, on
 9 significant environmental issues raised by the proposal.⁴²⁶
- 10
- 11 (b) ~~[In the developing the EIS preparers shall make every effort to convey the required~~
 12 ~~information succinctly in a form easily understood, both by members of the public and by~~
 13 ~~public decision-makers, giving attention to the substance of the information conveyed~~
 14 ~~rather than to the particular form, or length, or detail of the statement.]~~⁴²⁷ The scope of
 15 the ~~[statement]~~ **draft EIS**⁴²⁸ may vary with the scope of the proposed **action** and its
 16 **impact**, taking into consideration whether the **action** is a **project** or a **program**.⁴²⁹ Data
 17 and analyses in a ~~[statement]~~ **draft EIS**⁴³⁰ shall be commensurate with the importance of
 18 the **impact**, and less important material may be summarized, consolidated, or simply
 19 referenced. ~~[Statements]~~ A **draft EIS**⁴³¹ shall indicate at appropriate points in the text any
 20 underlying studies, reports, and other information obtained and considered in preparing

⁴²⁴ Formerly § 11-200-17, HAR (1996). All language in this section comes from section 11-200-17, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

⁴²⁵ 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.

⁴²⁶ Source: § 11-200-16, HAR (1996).

⁴²⁷ This language has been moved to the proposed purpose section, 11-200A-1A, and modified to apply any chapter 343, HRS document.

⁴²⁸ Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

⁴²⁹ Version 0.3 proposes definitions for project and program, and this section provides how the distinction between a project and program influences the style of the document and the breadth and specificity of analysis and information contained therein.

⁴³⁰ Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

⁴³¹ Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

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1 the [statement] draft EIS⁴³², including cost benefit analyses and reports required under
 2 other legal authorities.⁴³³

- 3
 4 (c) The level of detail in a draft EIS may be more broad for programs or components of a
 5 program for which site-specific impacts are not discernible, and shall be more specific
 6 for components of the program for which site-specific, project-level impacts are
 7 discernible. A draft EIS for a program may, where necessary, omit evaluating issues that 031
 8 are not yet ready for decision at the [planning] project⁴³⁴ level. Analysis of the program
 9 may be based on conceptual information in some cases and may discuss in general
 10 terms the constraints and sequences of events likely to result in any narrowing of future
 11 options. It may present and analyze in general terms hypothetical scenarios that are likely
 12 to occur.⁴³⁵

- 13
 14 (d) The draft EIS shall contain a summary sheet [which] that concisely discusses the
 15 following:
 16 (1) Brief description of the **action**;
 17 (2) Significant beneficial and adverse **impacts** (including **cumulative impacts** and
 18 **secondary impacts**);
 19 (3) Proposed mitigation measures;
 20 (4) Alternatives considered;
 21 (5) Unresolved issues; ~~and~~
 22 (6) Compatibility with land use plans and policies, and listing of permits or
 23 **approvals**[~~;~~]; and⁴³⁶
 24 (7) A list of relevant documents for actions considered in the analysis of the
 25 preparation of the EIS.⁴³⁷

⁴³² Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft EIS as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

⁴³³ Source: § 11-200-19, HAR (1996). This paragraph is included here and mirrored in proposed section 11-200A-18A, on the preparation and the contents of a draft EA. It provides that the scope and specificity within an EIS will be commensurate with the scope of the action and the degree of specificity to which impacts are discernible at the time of preparation.

⁴³⁴ Clarifies that the programmatic EIS may omit issues that are not ripe for discussion at a more narrow scale. In the case of such an omission, a subsequent project may require its own chapter 343, HRS determination. Proposed subchapter 7A assists with understanding this situation.

⁴³⁵ Distinguishes between the level of detail and style of assessment for programs, which may be more broad and conceptual in nature and that for projects, which are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph mirrors the proposed paragraph in section 11-200A-18A regarding contents of a draft EIS.

⁴³⁶ Housekeeping.

#031

Posted by **E Kechloian** on **11/18/2017** at **4:57pm**

Comment

Doesn't this leave too many potential impacts out of the DEIS as the applicant/agency can decide not to include an area that they do not want to include by claiming "the issues are not yet ready for a decision at the project". This has been a problem with NPDES applications that have been submitted to DOH in the past.

Agree: 0, Disagree: 0

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- 1
- 2 (e) The draft **EIS** shall contain a table of contents.
- 3
- 4 (f) The draft **EIS** shall contain a separate and distinct section that includes [a statement of]
- 5 **the**⁴³⁸ purpose and need for the proposed **action**.
- 6
- 7 (g) The draft **EIS** shall contain a [project]⁴³⁹ description **of the action**⁴⁴⁰ [which] **that** shall
- 8 include the following information, but need not supply extensive detail beyond that
- 9 needed for evaluation and review of the environmental **impact**:
- 10 (1) A detailed map (preferably a United States Geological Survey topographic⁰³² map,
- 11 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a
- 12 related regional map;
- 13 (2) [~~Statement of objectives~~] **Objectives of the proposed action**⁴⁴¹;
- 14 (3) General description of the **action's** technical, economic, social, **cultural**,⁴⁴² and
- 15 environmental characteristics;
- 16 (4) Use of [public] **state or county**⁴⁴³ funds or lands for the **action**;
- 17 (5) Phasing and timing of **the**⁴⁴⁴ **action**;
- 18 (6) Summary technical data, diagrams, and other information necessary to [permit]
- 19 **enable** an evaluation of potential environmental **impact** by commenting agencies
- 20 and the public; and
- 21 (7) Historic perspective.
- 22
- 23
- 24
- 25
- 26
- 27

⁴³⁷ Clarifies that the list of relevant documents means documents prepared for other chapter 343, HRS, environmental review documents. The documents may be used to identify potential segmentation or cumulative impacts of a proposed action, or for other purposes in preparation of the EIS.

⁴³⁸ "Statement" is a defined term in this chapter and in chapter 343, HRS, so removed the word because it is used with a different meaning here.

⁴³⁹ Global change reverting "program or project" back to "action" to avoid any ambiguity as the use of "program or project" over the term "action". Deletes both here and replaces "action" after the word "description".

⁴⁴⁰ Part of global change reverting "program or project" back to "action" to avoid any ambiguity as the use of "program or project" over the term "action". Deletes both here and replaces "action" after the word "description".

⁴⁴¹ "Statement" is a defined term in this chapter and in chapter 343, HRS, so removed the word because it is used with a different meaning here.

⁴⁴² Adds "cultural" to the characteristics, in line with Act 50 (2000).

⁴⁴³ Replaces the word "public" with "state or county" to clarify the meaning.

⁴⁴⁴ Housekeeping.

#032

Posted by **E Kechloian** on **11/18/2017** at **7:27pm**

Comment

An USGS map should be required as it is easier to see the route runoff, etc. might take to waters of the US. USGS maps are easily gotten.

Agree: 0, Disagree: 0

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- 1 (h) The draft **EIS** shall describe in a separate and distinct section **reasonable**⁴⁴⁵ alternatives
 2 ~~[which] that~~ could attain the objectives of the **action** ~~[regardless of cost, in sufficient detail~~
 3 ~~to explain why they were rejected~~⁴⁴⁶]. The section shall include a rigorous exploration and
 4 objective evaluation of the environmental **impacts** of all such alternative **actions**.⁴⁴⁷
 5 Particular attention shall be given to alternatives that might enhance environmental
 6 quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**,
 7 costs, and risks **of the action**⁴⁴⁸. Examples of alternatives include⁰³⁸
 8 (1) The alternative of no **action**; ⁰³⁹
 9 (2) Alternatives requiring **actions** of a significantly different nature ~~[which] that~~ would
 10 provide similar benefits with different environmental **impacts**;
 11 (3) Alternatives related to different designs or details of the proposed **actions** ~~[which]~~
 12 ~~that~~ would present different environmental **impacts**;
 13 (4) The alternative of postponing **action** pending further study; and,
 14 (5) Alternative locations for the proposed ~~[project]~~ **action**⁴⁴⁹.
 15 In each case, the analysis shall be sufficiently detailed to allow the comparative ⁰³⁶
 16 evaluation of the environmental benefits, costs, and risks of the proposed **action** ~~and~~
 17 each reasonable alternative. ~~For alternatives that were eliminated from detailed study, the~~
 18 ~~section shall contain a brief discussion of the reasons for not studying those alternatives~~
 19 ~~in detail.~~⁴⁵⁰ For any **agency actions**, the discussion of alternatives shall include, where
 20 relevant, those alternatives not within the existing authority of the **agency**.
 21
 22 (i) The draft **EIS** shall include a description of the environmental setting, including a
 23 description of the **environment** in the vicinity of the **action**, as it exists before
 24 commencement of the **action**, from both a local and regional perspective. Special
 25 emphasis shall be placed on environmental resources that are rare or unique to the
 26 region and the **action** site (including natural or human-made resources of historic
 27 **cultural**,⁴⁵¹ archaeological, or aesthetic significance); specific reference to related ⁰³⁷
 28 **actions**, public and private, existent or planned in the region shall also be included for
 29 purposes of examining the possible overall **cumulative impacts** of such **actions**.
 30 **Proposing agencies** and **applicants** shall also identify, where appropriate, population
 31 and growth characteristics of the affected area ~~and~~ any population and growth

⁴⁴⁵ 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.

⁴⁴⁶ 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.

⁴⁴⁷ Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.

⁴⁴⁸ Clarifies that the effects, costs, and risks are related to the action.

⁴⁴⁹ Clarifies that alternative locations should be included for both programs and projects.

⁴⁵⁰ Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).

⁴⁵¹ Adds "cultural" in line with Act 50 (2000).

#033

Posted by **E Kechloian** on **11/18/2017** at **7:36pm**

Comment

Does this include a difference in sizing the project or program?

Agree: 0, Disagree: 0

#034

Posted by **Choon James** on **10/30/2017** at **2:12pm**

Comment

The public who offers alternatives should be noted in the Statement per verbatim that was submitted.

Statement with NO ALTERNATIVES should require at least reasonable explanations of such. "Regardless of cost, in sufficient detail to explain why they were rejected" should remain. To hide behind costs would undermine the environmental review process. There may be costs to the project owner, but what about the irreparable "costs" to the most affected public and environment who would probably have their quality of life irreparably affected?

Agree: 0, Disagree: 0

#035

Posted by **Koohan Paik** on **10/30/2017** at **9:54pm**

Comment

I believe that the original language that said that all alternatives should be included -- regardless of cost -- should be retained. The determination of what is unreasonable cost is too subjective. By allowing for omissions of such subjective alternatives would compromise the effectiveness of the EIS process.

Agree: 0, Disagree: 0

Reply by **Anonymous** on **11/09/2017** at **8:03pm**

Comment

I must agree with this comment, "regardless of cost" is needed as explained.

Agree: 0, Disagree: 0

Reply by **E Kechloian** on **11/18/2017** at **8:15pm**

Comment

"Regardless of cost" is a necessary qualifier. As costs if left as a limiting factor could be increased without just cause so as to eliminate the need to explore a particular alternative.

Agree: 0, Disagree: 0

#036

Posted by **E Kechloian** on **11/18/2017** at **7:41pm**

Comment

Should these alternatives actually be achievable or available to be considered an alternative?

Agree: 0, Disagree: 0

#037

Posted by **E Kechloian** on **11/18/2017** at **8:28pm**

Comment

Shouldn't endangered species and habitat or habitat that is inviting and supportive of endangered species not currently located there be included? It would be a dismal state of affairs if an endangered species was making a come back but we had allowed destruction of their future habitat to stop their ability to establish themselves.

Agree: 0, Disagree: 0

#038

Posted by **E Kechloian** on **11/18/2017** at **9:18pm**

Comment

A discussion of alternative uses for the land and a comparison of the total amount of natural resources (Public Trust Doctrine resources) that would be used by the alternative uses versus the amount to be used by the proposed action. And the benefits to the community of each.

Agree: 0, Disagree: 0

#039

Posted by **E Kechloian** on **11/18/2017** at **8:20pm**

Comment

No action needs to be defined as the current use or use just prior to the proposed action. I have seen this written up as a scenario that is equally bad but in fact was non-existent or made up.

Agree: 0, Disagree: 0

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- 1 assumptions used to justify the **proposed**⁴⁵² **action**, and [~~determine~~] **any**⁴⁵³ secondary
 2 population and growth **impacts** resulting from the proposed **action** and its alternatives. In
 3 any event, it is essential that the sources of data used to identify, qualify, or evaluate any
 4 and all environmental consequences be expressly noted **in the draft EIS**⁴⁵⁴.
- 5
- 6 (j) The draft **EIS** shall include a [~~statement~~] **description**⁴⁵⁵ of the relationship of the proposed
 7 **action** to land use **and natural or cultural resource**⁴⁵⁶ plans, policies, and controls for the
 8 affected area. Discussion of how the proposed **action** may conform or conflict with
 9 objectives and specific terms of approved or proposed land use **and resource**⁴⁵⁷ plans,
 10 policies, and controls, if any, for the area affected shall be included. Where a conflict or
 11 inconsistency exists, the [~~statement~~] **draft EIS**⁴⁵⁸ shall describe the extent to which the
 12 **agency** or **applicant** has reconciled its proposed **action** with the plan, policy, or control,
 13 and the reasons why the **agency** or **applicant** has decided to proceed, notwithstanding
 14 the absence of full reconciliation.
- 15
- 16 (k) The draft **EIS** shall also contain a list of necessary **approvals**, required for the **action**.
 17 from governmental agencies, boards, or commissions or other similar groups having
 18 jurisdiction. The status of each identified **approval** shall also be described. 040
- 19
- 20 (l) The draft **EIS** shall include [~~a statement~~] **an analysis**⁴⁵⁹ of the probable **impact** of the
 21 proposed **action** on the **environment**, and **impacts** of the natural or human
 22 **environment** on the [~~project~~] **action**.⁴⁶⁰ [~~which~~] **This analysis**⁴⁶¹ shall include
 23 consideration of all phases of the **action** and consideration of all consequences on the
 24 **environment** [~~;~~] **including direct and indirect effects** [~~shall be included~~]⁴⁶². The
 25 interrelationships and **cumulative environmental impacts** of the proposed **action** and
 26 other related [~~projects~~] **actions**⁴⁶³ shall be discussed in the draft **EIS**. [~~It should be~~
 27 ~~realized~~] **The draft EIS should recognize**⁴⁶⁴ that several **actions**, in particular those that
 28 involve the construction of public facilities or structures (e.g., highways, airports, sewer

⁴⁵² Parallels use of “proposed” later in the sentence and distinguishes this “action” from “action” used previously in this paragraph.

⁴⁵³ Housekeeping.

⁴⁵⁴ Housekeeping.

⁴⁵⁵ Removes the word “statement,” which is a technical word in chapter 343, HRS, that refers to an EIS. Uses “description” similar to other paragraphs.

⁴⁵⁶ Includes natural resource plans such as water management plans.

⁴⁵⁷ Includes natural resource plans such as water management plans.

⁴⁵⁸ Clarifies that this applies to draft EISs.

⁴⁵⁹ 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.

⁴⁶⁰ Clarifies that this sentence applies to both projects and programs.

⁴⁶¹ Stylistic change to increase readability.

⁴⁶² Housekeeping.

⁴⁶³ Clarifies that both projects and programs should be considered.

⁴⁶⁴ Housekeeping.

#040

Posted by **Anonymous** on **11/09/2017** at **7:56pm**

Comment

If any permits or approvals are granted with the anticipation that no EIS would be needed, upon the determination that a Draft EIS is needed, any permits or approvals that were granted prior to the Draft EIS are no longer valid and the applicant needs to reapply for said permits and approvals upon the successful completion and acceptance of an EIS by the accepting authority.

Agree: 1, Disagree: 0

Reply by **Anonymous** on **11/09/2017** at **7:59pm**

Comment

Status of the approvals, if already submitted, can read, pending acceptance of an EIS.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 systems, water resource [projects] **actions**, etc.) may well stimulate or induce **secondary**
 2 **effects**. These **secondary effects** may be equally important as, or more important than,
 3 **primary effects**, and shall be thoroughly discussed to fully describe the probable **impact**
 4 of the proposed **action** on the **environment**. The population and growth **impacts** of an
 5 **action** shall be estimated if expected to be significant, and an evaluation **shall be**⁴⁶⁵
 6 made of the **effects** of any possible change in population patterns or growth upon the
 7 resource base, including but not limited to land use, water, and public services, of the
 8 area in question. Also, if the proposed **action** constitutes a direct or indirect source of
 9 pollution as determined by any governmental **agency**, necessary data **regarding these**
 10 **impacts**⁴⁶⁶ shall be incorporated into the **EIS**. The significance of the **impacts** shall be
 11 discussed in terms of **subsections** [(j), (k), (l), and (m)] **(m), (n), (o), and (p)**⁴⁶⁷.

041

12
 13 (m) 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 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
 23 (n) The draft **EIS** shall include in a separate and distinct section a description of all
 24 irreversible and irretrievable commitments of resources that would be involved in the
 25 proposed **action** should it be implemented. Identification of unavoidable **impacts** and the
 26 extent to which the **action** makes use of non-renewable resources during the phases of
 27 the **action**, or irreversibly curtails the range of potential uses of the **environment** shall
 28 also be included. The possibility of environmental accidents resulting from any phase of
 29 the **action** shall also be considered. [~~Agencies shall avoid construing the term~~
 30 ~~"resources" to mean only the labor and materials devoted to an action. "Resources" also~~
 31 ~~means the natural and cultural resources committed to loss or destruction by the action.~~]

042

32
 33 (o) The draft **EIS** shall address all probable adverse environmental **effects** [~~which~~] **that**
 34 cannot be avoided. Any adverse **effects** such as water or air pollution, urban congestion,
 35 threats to public health, or other consequences adverse to environmental goals and
 36 guidelines established by environmental response laws, coastal zone management laws,
 37 pollution control and abatement laws, and environmental policy [~~such as that~~] **including**
 38 **those**⁴⁶⁸ found in chapters 128D **(Environmental Response Law)**, 205A **(Coastal Zone**

⁴⁶⁵ Housekeeping.

⁴⁶⁶ Clarifies what the data should be about.

⁴⁶⁷ Housekeeping to update paragraph references.

⁴⁶⁸ Housekeeping.

#041

Posted by **E Kechloian** on **11/18/2017** at **9:00pm**

Comment

Impaired Water Bodies of the State should be disclosed and the effects of additional pollution by the proposed action. If the Impaired water Body is at 90% of TMDL no pollutants can be added.

Agree: 0, Disagree: 0

#042

Posted by **E Kechloian** on **11/18/2017** at **9:31pm**

Comment

Possible environmental accidents Shall be identified as well as prevention mechanisms, controls used during the accident, what the cleanup protocol will be and who will be financially responsible for clean up.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 **Management)**, 342B **(Air Pollution Control)**, 342C **(Ozone Layer Protection)**, 342D **(Water**
 2 **Pollution)**, 342E **(Nonpoint Source Pollution Management and Control)**, 342F **(Noise**
 3 **Pollution)**, 342G **(Integrated Solid Waste Management)**, 342H **(Solid Waste Recycling)**,
 4 342I **(Special Wastes Recycling)**, 342J **(Hazardous Waste, including Used Oil)**, 342L
 5 **(Underground Storage Tanks)**, [342N,⁴⁶⁹ 342P **(Asbestos and Lead)**, and 344 **(State**
 6 **Environmental Policy)**⁴⁷⁰, HRS, ~~[shall be included, including]~~ **and**⁴⁷¹ those **effects**
 7 discussed in other ~~[actions]~~ **subsections** of this ~~[paragraph]~~ **section**⁴⁷² ~~[which]~~ **that** are
 8 adverse and unavoidable under the proposed **action** **must be addressed in the draft**
 9 **EIS**⁴⁷³. Also, the rationale for proceeding with a proposed **action**, notwithstanding
 10 unavoidable **effects**, shall be clearly set forth in this section. The draft **EIS** shall indicate
 11 what other interests and considerations of governmental policies are thought to offset the
 12 adverse environmental **effects** of the proposed **action**. The **draft**⁴⁷⁴ ~~[statement]~~ **EIS** shall
 13 also indicate the extent to which these stated countervailing benefits could be realized by
 14 following reasonable alternatives to the proposed **action** that would avoid some or all of
 15 the adverse environmental **effects**.
 16
- 17 (p) The draft **EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or
 18 reduce ~~[impact]~~ **impacts**⁴⁷⁵, including provision for compensation for losses of cultural,
 19 community, historical, archaeological, fish and wildlife resources, including the acquisition
 20 of land, waters, and interests therein. Description of any mitigation measures included in
 21 the **action** plan to reduce significant, unavoidable, adverse **impacts** to insignificant
 22 levels, and the basis for considering these levels acceptable shall be included. Where a
 23 particular mitigation measure has been chosen from among several alternatives, the
 24 measures shall be discussed and reasons given for the choice made. ~~[Included]~~ **The draft**
 25 **EIS shall include**, where possible ~~[and appropriate]~~⁴⁷⁶, ~~[should be]~~⁴⁷⁷ specific reference to
 26 the timing of each step proposed to be taken in ~~[the]~~ **any**⁴⁷⁸ mitigation process, what
 27 performance bonds, if any, may be posted, and what other provisions are proposed to
 28 assure that the mitigation measures will in fact be taken.
 29
- 30 (q) The draft **EIS** shall include a separate and distinct section that summarizes unresolved
 31 issues and contains either a discussion of how such issues will be resolved prior to

⁴⁶⁹ Repealed.

⁴⁷⁰ Provides titles of each chapter referenced.

⁴⁷¹ Housekeeping.

⁴⁷² Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

⁴⁷³ Housekeeping. Replaces "shall be included" deleted above.

⁴⁷⁴ Clarifies that this is the draft EIS.

⁴⁷⁵ Housekeeping.

⁴⁷⁶ Removes redundant language.

⁴⁷⁷ Housekeeping.

⁴⁷⁸ Changes reference to "any" mitigation measure process that may result from the analysis.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 commencement of the **action**, or what overriding reasons there are for proceeding
 2 without resolving the [~~problems~~] **issues**⁴⁷⁹.
 3
- 4 (r) The draft **EIS** shall include a separate and distinct section that contains a list identifying
 5 all governmental agencies, other organizations and private individuals consulted in
 6 preparing the **statement**, and **shall disclose**⁴⁸⁰ the identity of the **persons**, firms, or
 7 **agency** preparing the **statement**, by contract or other authorization[~~, shall be disclosed~~].^{047 46}
 8
- 9 (s) The draft **EIS** shall include a separate and distinct section that contains:
 10 (1) [~~reproductions~~] Reproductions of all [~~substantive~~] **written** comments [~~and~~
 11 ~~responses made~~] **submitted**⁴⁸¹ during the [~~consultation process~~] **thirty-day**
 12 **consultation period required in section 11-200-23A. If a number of comments are**
 13 **identical or very similar, one representative copy may be included with a list of the**⁰⁴⁹
 14 **names of each commenter, when known, that submitted the identical comments**
 15 **rather than reproducing each identical comment**⁴⁸²;
 16 (2) **Responses to all substantive written comments made during the thirty-day**
 17 **consultation period required in section 11-200A-23A. Responses shall be made**
 18 **within the draft EIS.**⁴⁸³ **If a number of comments are identical or very similar, the**
 19 **proposing agency or applicant may group the comments and prepare a single**
 20 **response for each grouping.**⁴⁸⁴ **The name of each commenter, when known, shall**
 21 **be included with the grouped response.**⁴⁸⁵
 22 (4) **A summary of any EIS public scoping meetings, including a general summary**
 23 **of the oral comments**⁴⁸⁶ **made, and a representative sample of any handout**
 24 **related to the action provided at EIS public scoping meetings**⁴⁸⁷;

⁴⁷⁹ Aligns language throughout sentence to reference “issues” rather than “issues” and “problems”.

⁴⁸⁰ Stylistic change to increase readability.

⁴⁸¹ Emphasizes that the comments are written comments that are submitted during the consultation period.

⁴⁸² Aligns language with section 11-200A-26A that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

⁴⁸³ Clarifies that responses shall be made and included within the draft EIS itself. Responses do not need to separately be sent to each commenter.

⁴⁸⁴ Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

⁴⁸⁵ Requires including the names of commenters who provided the comments that have been grouped so that those commenters may determine whether their comment was responded to and what the response is.

⁴⁸⁶ The general summary of oral comments does not need to be an exhaustive or verbatim transcript of the comments made at the public scoping meeting. Rather, it is intended to capture generally the comments made at the scoping meeting. Oral comments are not required to be responded to directly in the EIS, but must be taken into consideration in identifying likely effects. A court report or transcriber is not required.⁰⁴⁸

⁴⁸⁷ Requires that a representative sample of the handouts prepared for and distributed at any public scoping meeting are included in the draft EIS, including the agenda. Clarifies that any handouts not related

#043

Posted by **Choon James** on **10/30/2017** at **2:27pm**
Comment

Identical or very similar are two different things.

If a public citizen takes the time and effort to comment, their efforts should be record per verbatim. If it's 100% petition material, the signer name must be included.

Even then, each participant requires a response from the consultant.

I wholeheartedly disagree that a "general summary" of the oral comments is sufficient. A recorder shall be present to record the oral scoping meetings per verbatim and made an integral part of the report.

I've seen too many meetings sanitized and white-washed by summaries that deleted all significant exchanges and oral testimonies.

Agree: 0, Disagree: 0

#044

Posted by **Anonymous** on **11/09/2017** at **8:13pm**
Comment

If grouping comments will be allowed than an independent agency needs to determine what is a similar comment and not the proposing agency or applicant. They are biased.

Agree: 0, Disagree: 0

#045

Posted by **E Kechloian** on **11/18/2017** at **9:51pm**
Comment

Grouping shall only be allowed on form letters and petitions. Any grouping otherwise is too much at the discretion of the proposing agency or applicant. Most documents are now electronic so all written comments shall be published.

Agree: 0, Disagree: 0

#046

Posted by **E Kechloian** on **11/18/2017** at **9:44pm**
Comment

The educational background and credentials of said persons shall be provided in this section.

Agree: 0, Disagree: 0

#047

Posted by **Choon James** on **10/30/2017** at **2:16pm**
Comment

The DRAFT EIS shall be mailed to the most affected public parties within 1000 feet of the proposed project.

When it's farmlands or large acreages, it shall be mailed to public parties within 1000 feet from its boundary lines.

The Liquor Commission does a great job informing affected public with its liquor license. It can be done easily.

Agree: 0, Disagree: 0

#048

Posted by **Choon James** on **10/30/2017** at **2:31pm**

Comment

I totally disagree that general summary can compensate for the public comments meeting. Verbatim transcript is critical and protects the intent, concerns, and first person words of the testifier.

A court reporter or transcriber shall be required. The entire transcript shall be made an integral part of the EA/EIS statement.

We are beginning to see more and more sanitized and white-washed summary that does not reflect accurately on the comments of the public.

Agree: 0, Disagree: 0

#049

Posted by **Choon James** on **10/30/2017** at **2:20pm**

Question

How "substantive" is "substantive". Consults should include EACH comment per verbatim as submitted.

Are you referring to online petitions?

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (5) A list of those **persons** or **agencies** who were consulted and had no comment
 2 ~~[shall be included in the draft EIS]~~ in a manner indicating that no comment was⁰⁵⁰
 3 provided;⁴⁸⁸ and
 4 (6) A representative sample of the **agency** consultation request letter.⁴⁸⁹
 5
 6 (t) An **addendum** document⁴⁹⁰ to a draft environmental impact statement **EIS** shall
 7 reference the original draft environmental impact statement **EIS** to which⁴⁹¹ it attaches
 8 to⁴⁹² and comply with all applicable filing, public review, and comment requirements set
 9 forth in subchapter [Z] **10A**.⁴⁹³
 10
 11 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-5, 343-6)
 12

to the action need not be included. For example, general promotional materials for the applicant need not be included, but a factsheet outlining the proposed action should be included.

⁴⁸⁸ Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual. Also includes situations where a letter requesting comments from an agency or other individual or entity is sent and the response received provides that the agency, other entity, or individual has “no comment”.

⁴⁸⁹ Makes explicit that only one representative copy of the agency consultation letter is required, similar to requiring only one reproduction of identical comments, such as form letters.

⁴⁹⁰ Removes the word document as it is unnecessary.

⁴⁹¹ Housekeeping.

⁴⁹² Housekeeping.

⁴⁹³ Formerly § 11-200-22(d).

#050

Posted by **Choon James** on **10/30/2017** at **2:37pm**

Persons or agencies who were consulted and had NO COMMENT SHALL BE INCLUDED in the draft EIS and the FINAL EIS.

This is an important reflection of inaction. It also provides an accurate record for future research and so forth.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-25A Public Review Requirements for Draft
 2 Environmental Impact Statements and Addenda⁴⁹⁴

3 (a) Public review shall not substitute for early and open discussion with interested **persons**
 4 and **agencies**[,]⁴⁹⁵ concerning the environmental **impacts** of a proposed **action**. Review
 5 of the **draft**⁴⁹⁶ **EIS**, shall serve to provide the public and other agencies an opportunity to
 6 discover the extent to which a **proposing agency** or **applicant** has examined
 7 environmental concerns and available alternatives.

8
 9 (b) The period for public review and for submitting written comments shall commence [~~as of~~]
 10 **from** the date **that**⁴⁹⁷ notice of availability of the draft **EIS** is initially issued in the **periodic**
 11 **bulletin** and shall continue for a period of forty-five days, **unless mandated otherwise by**
 12 **statute**⁴⁹⁸. Written comments to the [~~approving agency or~~] **accepting authority**[,
 13 ~~whichever is applicable,~~]⁴⁹⁹ with a copy of the comments to the [~~applicant or~~] **proposing**
 14 **agency or applicant**⁵⁰⁰, shall be received or postmarked to the **approving agency** or
 15 **accepting authority**, within [~~said~~] **the**⁵⁰¹ forty-five-day **comment**⁵⁰² period. Any comments
 16 outside of the forty-five day comment period need not be [~~considered or~~] responded to
 17 **nor considered**⁵⁰³.

18
 19 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)
 20

⁴⁹⁴ Formerly § 11-200-22, HAR (1996). Section 11-200-22, HAR, (1996) has been divided into two sections; this one and § 11-200A-26A. This section addresses the public review requirements, including the period for public review. Section 11-200A-26A addresses response requirements for written comments received during the public review period.

⁴⁹⁵ Housekeeping.

⁴⁹⁶ Clarifies that the document is a draft EIS.

⁴⁹⁷ Housekeeping.

⁴⁹⁸ Acknowledges that the public review period may be altered for certain actions by statute. For example, the development or expansion of forensic facilities of the department of health or in-state correctional facilities have 60-day comment periods for draft EISs (and EAs), per sections 334-2.7 and 353-16.35, HRS, respectively.

⁴⁹⁹ For an applicant EIS, the approving authority and accepting agency are the same.

⁵⁰⁰ Place “proposing agency” before “applicant”.

⁵⁰¹ Housekeeping.

⁵⁰² Clarifies that the forty-five days is for the comment period.

⁵⁰³ Stylistic change to increase readability.

#051

Posted by **Choon James** on **10/30/2017** at **2:49pm**

Comment

Again, the EA and EIS process is the best kept secret in town.

How reads the fine print classifieds or are on the OEQC mailing list?

The intent of the EA and EIS is primarily to allow public participant. Generally most projects barely interacts with the most affected general public.

Only a small handful of legal attorneys or those involved in this very small field understand and know about the timeliness of such a document or how to comment or even realize that they have no standing if they did not comment within the very restrictive 45 days timeline.

It appears that many EA or EIS are released during major holidays when associations or neighborhood boards are in recess. That certainly happened to us many times in our rural Koolauloa Neighborhood Board #28.

Comments outside of the 45-days comment period **MUSTBE CONSIDERED**. AT lot of times, the most affected people find out about a project EA or EIS **AFTER THE FACT**.

If the intent is to collect and analyze critical information from those in the trenches with upfront experiences, why cut them off?

At this junction, the 45-day timeline is used as a weapon against the general public which are not well-versed in this EA/EIS process.

Agree: 0, Disagree: 0

Reply by **Anonymous** on **11/09/2017** at **8:24pm**

Comment

I must agree. If the people most affected by a proposed project are not aware of it until after the comment period is over, when and how can they than make their very valid concerns known? It always appears to be that the completion of an EIS is advertised with news stories about the new project as the projects sponsor(s) wants the publicity at that time whereas the commencement of a Draft EIS has no such fanfare. More fanfare is needed for a DEIS!

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-26A Comment Response Requirements for Draft
 2 Environmental Impact Statements⁵⁰⁴

- 3 (a) All written comments shall be reproduced in the final EIS, provided that if a number of
 4 written comments are identical or very similar, the **proposing agency** or **applicant** may
 5 include a single representative sample of those written comments with a list of the nam
 6 of commenters, when known, that submitted the identical comments rather than
 7 reproducing each individual comment.⁵⁰⁵
- 8
- 9 (b) In accordance with the content requirements of section 11-200A-27A, [The] the
 10 **proposing agency** or **applicant** shall respond [in writing]⁵⁰⁶ within the final EIS⁵⁰⁷ to the
 11 substantive written c⁰⁵⁷omments received or postmarked during the forty-five-day review
 12 period. [and incorporate the comments and responses in the final EIS]. [The response to
 13 comments shall include:]⁵⁰⁸ In deciding whether a written comment is substantive, the
 14 **proposing agency** or **applicant** shall give careful consideration to the validity,
 15 significance, and relevance of the comment to the scope, analysis, or process of ⁰⁵⁶EIS,
 16 bearing in mind the purpose of this chapter and chapter 343, HRS.⁵⁰⁹ Written comments
 17 deemed by the **proposing agency** or **applicant** as non-substantive and to which no
 18 response was provided shall be clearly indicated.
- 19
- 20 (c) In responding to substantive written comments, **proposing agencies** and **applicants**
 21 [Responses] shall endeavor to resolve conflicts, inconsistencies, or concerns identified
 22 and to provide a response that is commensurate with the content of those comments.⁵¹⁰

⁵⁰⁴ Formerly § 11-200-22, HAR (1996). Section 11-200-22, HAR, (1996) has been divided into two sections including this and § 11-200A-25A. This section addresses response requirements for written comments received during the public review period as amended from section 11-200-22, HAR (1996).

⁵⁰⁵ Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

⁵⁰⁶ Removes phrase because the response must be in the final EIS, which is written.

⁵⁰⁷ Clarifies that responses shall be made and included within the draft EIS itself. Responses do not need to separately be sent to each commenter.

⁵⁰⁸ Source: § 11-200-22(c), HAR (1996).

⁵⁰⁹ Source: § 11-200-22(c), HAR (1996) required proposing agencies and applicants to include a “point-by-point discussion of the validity, significance, and relevance of comments”. The proposed language uses the criteria to guide proposing agencies and applicants in determining whether a comment is substantial and therefore requires a response within the final EIS. The remaining provisions of this section focus the response to substantive comments on addressing the issues raised by comments in a manner commensurate with the content of the comment, to resolve conflicts, and address inconsistencies and concerns raised by the comment.

⁵¹⁰ Provides that responses to comments shall, at a minimum, endeavor to be commensurate with the content of the comment received. For example, a brief response to a brief, focused comment is warranted, whereas a longer, detailed comment should receive a longer, more detailed response. The length of response is not the only measure of commensurability. A brief comment may raise a significant environmental concern requiring detailed discussion and analysis within the body of the EIS, and the

#052

Posted by **Maria A. Maitino** on **10/30/2017** at **3:10pm**
Comment

I am completely opposed to the change of "batching comments". The applicant that is proposing this change is NOT a neutral party. How can we allow them to decide whether a written comment is substantive or not? They cannot accurately or fairly assess if comments were "insignificant". The EIS process is to be a democratic process, and this proposed change would remove any semblance of fairness and accuracy in decision making.

Agree: 0, Disagree: 0

#053

Posted by **Anonymous** on **11/09/2017** at **8:28pm**
Comment

Again, if there is to be a batching of comments, it can not be undertaken by the proposing agency or applicant as they are a very biased party and thus, if done, it must be done by an independent agency.

Agree: 0, Disagree: 0

#054

Posted by **Koohan Paik** on **10/30/2017** at **4:57am**
Comment

I object very strongly to the batching of comments that are deemed to be similar by the proposing agency or applicant. The proposing agency or applicant is not a neutral party, and it would be a conflict of interest if such party were to be the decision maker on whether comments could be batched. There would be no definitive criteria that would define "similar" other than the party's subjective, biased perspective.

It is this same biased perspective that would put the proposing agency or applicant in no position to accurately or fairly assess if comments were "insignificant." To allow this language into the revision would be an egregious action away from democracy in favor of oligarchy -- but hidden behind a sham, eviscerated EIS process that would function only as an illusion of democracy.

Agree: 0, Disagree: 0

#055

Posted by **Choon James** on **10/30/2017** at **2:54pm**
Comment

The key words are "identical or very similar". If it's a petition, the names of each who petitioned should be sufficient. But very similar is NOT identical. ----- Thus, it should be respected separately.

Each participant should receive a response from the consultant.

Agree: 0, Disagree: 0

#056

Posted by **Choon James** on **10/30/2017** at **3:22pm**

Comment

ALL comments by the public MUST be noted for the record.

The truth is only a minute portion of the affected people are aware of this process. In many cases, the most affected people do not even own computers or subscribe to the newspapers to know what's going on.

The EA and EIS have unfortunately become a status quo that does not encourage true public participation as hoped for in the Chapter 343. It has come to the point where even professional citizens, which are rare, are ignored.

Agree: 0, Disagree: 0

#057

Posted by **Choon James** on **10/30/2017** at **3:25pm**

Comment

"Substantive" can become an arbitrary word. ALL comments are substantive because the public has taken effort and time to participate. It must be part of the record.

IF the comments were non-substantive, it can also mean that the EA or EIS has not presented its materials and process in a format that is easily understood to the John Q. Public.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 ~~[Response letters reproduced in the text of the final EIS]~~⁵¹¹ **The response** shall indicate
 2 ~~[verbatim]~~⁵¹² changes that have been made to the text of the draft **EIS**. The response
 3 shall describe the disposition of significant environmental issues raised [(e.g., **For**
 4 **example, the response may point to** revisions to the proposed [project] **action**⁵¹³ to
 5 mitigate anticipated **impacts** or objections **raised in the comment**[, etc.]). In particular,
 6 the issues raised when the [applicant's or] **proposing agency's or applicant's**⁵¹⁴
 7 position is at variance with recommendations and objections raised in the comments shall
 8 be addressed in detail, giving reasons why specific comments and suggestions were not
 9 accepted, and factors of overriding importance warranting an override of the
 10 suggestions.⁵¹⁵

- 11
 12 (d) **If a number of substantive comments are identical or very similar, the proposing agency**
 13 **or applicant may group those comments and prepare a single response for each**
 14 **grouping.**⁵¹⁶ **The name of each commenter, when known, shall be included with the**
 15 **grouped response.**⁵¹⁷

16
 17 [Eff and comp ____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)
 18

response to the comment could include a discussion of how that comment was considered, and where the analysis that it necessitated is included within the body of the EIS. An acknowledgement of comments that provide less substantive content, but that are relevant to the scope, analysis or process of the EIS, may be a sufficient and a detailed discussion would not be required.

⁵¹¹ Removes language because individual response letters are no longer required to be sent to individual commenters, and comments may be grouped with a single response, so long as the agencies or persons who provided the comments are indicated.

⁵¹² The response does not need to reproduce the changes verbatim but instead, may reference the specific sections within the final EIS that were modified due to the comment.

⁵¹³ Provides clarity that revisions may be made to a project or a program.

⁵¹⁴ Place "proposing agency's" before "applicant's".

⁵¹⁵ Source: § 11-200-22(c), HAR (1996).

⁵¹⁶ Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

⁵¹⁷ Requires including the names of commenters who provided the comments that have been grouped so that those commenters may determine whether their comment was responded to and what the response is.

060

#058

Posted by **Anonymous** on **11/09/2017** at **8:31pm**

Comment

Again, to repeat, the grouping of any comments can not be done by the proposing agency or applicant, they are a biased party. If grouping or batching is to be done a wholly independent agency or neutral party needs to be involved.

Agree: 0, Disagree: 0

Reply by **E Kechloian** on **11/18/2017** at **10:26pm**

Comment

Agreed if not identical then a unbiased third party should make the decision.

Agree: 0, Disagree: 0

#059

Posted by **Choon James** on **10/30/2017** at **3:28pm**

Question

Group response?

What is the difference between "identical" or "very similar"?

If a person takes the effort and time to participate, why would it not warrant a respectful and factual response?

Agree: 0, Disagree: 0

Reply by **E Kechloian** on **11/18/2017** at **10:28pm**

Agreed. It is only respectful to give a point by point response, if not the commenter will not bother to comment on other DEISs. Why bother.

Agree: 0, Disagree: 0

#060

Posted by **E Kechloian** on **11/18/2017** at **10:36pm**

Comment

What would a commenter need to do if they felt their comment wasn't responded to when it was grouped and not printed?

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-27A Content Requirements; Final Environmental
 2 Impact Statement⁵¹⁸

3 (a) The final **EIS**, at a minimum, shall contain the information required in this section.⁵¹⁹ The
 4 contents shall fully declare the environmental implications of the proposed **action** and
 5 shall discuss all ~~[relevant and feasible]~~ **reasonably foreseeable**⁵²⁰ consequences of the
 6 **action**. In order that the public can be fully informed and that the **agency** can make a
 7 sound decision based upon the full range of responsible opinion on environmental
 8 **effects**, ~~[a statement]~~ **an EIS** shall include responsible opposing views, if any, on
 9 significant environmental issues raised by the proposal.⁵²¹

10
 11 (b) The final **EIS** shall consist of:
 12 (1) The draft **EIS** prepared in compliance with this subchapter, as⁵²² revised to
 13 incorporate substantive comments received during the ~~[consultation and]~~⁵²³ review
 14 processes in conformity with section 11-200A-26A, including reproduction of all
 15 comments and responses to substantive written comments⁵²⁴;
 16 ~~[(2)] [Reproductions of all letters received containing substantive questions, comments,~~
 17 ~~or recommendations and, as applicable, summaries of any scoping meetings~~
 18 ~~held;]~~⁵²⁵
 19 ~~[(3)]~~ (2) A list of **persons**, organizations, and public **agencies** commenting on the draft
 20 **EIS**;
 21 (3) A list of those **persons** or **agencies** who were consulted with in preparing the final
 22 **EIS** and had no comment shall be included in a manner indicating that⁰⁶¹
 23 comment was provided⁵²⁶.

⁵¹⁸ Formerly § 11-200-18, HAR (1996). All language in this section comes from section 11-200-18, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

⁵¹⁹ Mirrors introductory language for contents of a draft EIS in section 11-200A-23A, from section 11-200-17(a), HAR (1996).

⁵²⁰ 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.

⁵²¹ Source: § 11-200-16, HAR (1996).

⁵²² Connects this section with the content requirements of this subchapter.

⁵²³ Removes redundant language about consultation because comments received during the consultation process (i.e., following publication of the EISPN) are incorporated into the draft EIS under section 11-200-24A.

⁵²⁴ Indicates that section 11-200A-26A includes reproduction and response requirements to written comments on the draft EIS.

⁵²⁵ The reproduction and response requirements to written comments on the draft EIS within the final EIS are set forth in section 11-200A-26A, which is incorporated by reference in (b)(1).

⁵²⁶ Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual. Includes when an agency responds to a request for comments that it has “no comment”.

#061

Posted by **Choon James** on **10/30/2017** at **3:30pm**

Comment

This should be made an integral part of the statement and public report.

Inaction is an indication. It may further becomes pertinent information in the future when more research is done.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (4) [~~The responses of the applicant or proposing agency to each substantive~~
- 2 ~~question, comment, or recommendation received in the review and consultation~~
- 3 ~~processes,]~~⁵²⁷ A written general summary of oral comments made at an public⁰⁶²
- 4 hearings;⁵²⁸ and
- 5 (5) The text of the final **EIS** [~~which shall be~~]⁵²⁹ written in a format [~~which~~] that allows
- 6 the reader to easily distinguish changes made to the text of the draft **EIS**.
- 7
- 8 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-5, 343-6)
- 9

⁵²⁷ The reproduction and response requirements to written comments on the draft EIS within the final EIS are set forth in section 11-200A-26A, which is incorporated by reference in (b)(1).

⁵²⁸ Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

⁵²⁹ Housekeeping.

#062

Posted by **Anonymous** on **11/09/2017** at **8:36pm**

Comment

If there can not be a verbatim record of the hearings the summary should include at least the number of people in attendance, the number of comments supporting the proposal and the number of comments that do not support the proposal.

Agree: 0, Disagree: 0

#063

Posted by **Choon James** on **10/30/2017** at **3:35pm**

Comment

NO! NO! NO!

This will further undermine the public process.

There have been cases where the attendance at Public Hearing is practically non-existent but the record does not reflect it.

All public hearings should be recorded verbatim and made an integral part of the record. In fact, there should be an attendance count of public citizens, governmental and paid officials, including those affiliated with the project or developers.

A general summary sanitizes and white-washes the process. It does not serve the public good nor describe the meat of the meeting.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-28A Acceptability⁵³⁰

- 2 (a) Acceptability of ~~[a statement]~~ a final EIS⁵³¹ shall be evaluated on the basis of whether the
3 ~~[statement]~~ final EIS⁵³², in its completed form, represents an informational instrument
4 ~~[which]~~ that fulfills the ~~[definition of an EIS]~~ intent and provisions of chapter 343, HRS,⁵³³
5 and adequately discloses and describes all identifiable environmental **impacts** and
6 satisfactorily responds to review comments.
7
- 8 (b) A ~~[statement]~~ final EIS⁵³⁴ shall be deemed to be an acceptable document by the
9 **accepting authority or approving agency** only if all of the following criteria are satisfied:
10 (1) The procedures for assessment, consultation process, review, and the preparation
11 and submission of the ~~[statement]~~ EIS, from proposal of the action to publication
12 of the final EIS,⁵³⁵ have all been completed satisfactorily as specified in this
13 chapter;
14 (2) The content requirements described in this chapter have been satisfied⁵³⁶; and
15 (3) Comments submitted during the review process have received responses
16 satisfactory to the **accepting authority, or approving agency,** including properly
17 identifying comments as substantive and responding in a way commensurate to
18 the comment,⁵³⁷ and have been appropriately⁵³⁸ incorporated ~~[in]~~ into the
19 ~~[statement]~~ final EIS⁵³⁹.
20
- 21 (c) For **actions** proposed by **agencies**, the **proposing agency** may request the **office** to
22 make a recommendation regarding the acceptability or non-acceptability of the **EIS.** If the
23 office decides to make a recommendation, it shall submit the recommendation to the
24 accepting authority and proposing agency.⁵⁴⁰ In all cases involving state funds or

⁵³⁰ Formerly § 11-200-23, HAR (1996). All language in this section comes from section 11-200-23, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

⁵³¹ Clarifies that the document is a final EIS.

⁵³² Clarifies that the document is a final EIS.

⁵³³ Clarifies that the EIS must meet all applicable elements of environmental review.

⁵³⁴ Clarifies that the document is a final EIS.

⁵³⁵ 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.

⁵³⁶ Comments received and their responses being reproduced in the final EIS are part of the content requirement as described in proposed section 11-200A-26A.

⁵³⁷ Clarifies that the accepting authority must be satisfied that the proposing agency or applicant properly characterized comments as substantive or not and gave a commensurate response to substantive comments. Finding that substantive comments have been improperly categorized as non-substantive and therefore not receiving a response commensurate to the substantive nature of the comment could be reason to issue a nonacceptance.

⁵³⁸ Recognizes that not all comments are incorporated into the language of a final EIS.

⁵³⁹ Clarifies that the document is a final EIS.

⁵⁴⁰ Mirrors language in paragraph (e) and clarifies that the office can choose to make a recommendation. Unlike for applicants, chapter 343, HRS, imposes no deadline for making acceptance or nonacceptance

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 lands, the governor or ~~[an]~~ the governor's⁵⁴¹ authorized representative shall have final
 2 authority to accept the **EIS**. In cases involving only county funds or lands, the mayor of
 3 the respective county or ~~[an]~~ the mayor's⁵⁴² authorized representative shall have final
 4 authority to accept the **EIS**. The **accepting authority** shall take prompt measures to
 5 determine the acceptability or non-acceptability⁵⁴³ of the **proposing agency's** ~~[statement]~~
 6 **EIS**. In the event that the **action** involves ~~[both]~~ state and county lands ~~[or]~~, state or
 7 county funds, or both state and county lands and state and county⁵⁴⁴ funds,⁵⁴⁵ the
 8 governor or ~~[an]~~ the governor's⁵⁴⁶ authorized representative shall have final authority to
 9 accept the **EIS**.
- 10
- 11 (d) Upon **acceptance** or non-acceptance of the **EIS**, a notice shall be filed by the appropriate
 12 **accepting authority** with both the **proposing agency** and the **office**. For any non-
 13 accepted **EIS**, the notice shall contain specific findings and reasons for non-acceptance.
 14 The **office** shall publish notice of the determination of **acceptance** or non-acceptance in
 15 the **periodic bulletin** in accordance with section ~~[11-200-3]~~ 11-200A-5A.⁵⁴⁷ **Acceptance**
 16 of a required **statement** shall be a condition precedent to the use of state or county lands
 17 or funds in implementing the proposed **action**.
- 18
- 19 (e) For **actions** proposed by **applicants** requiring **approval** from an **agency**, the **applicant**
 20 or **accepting authority**, which is the approving agency,⁵⁴⁸ may request the **office** to
 21 make a recommendation regarding the acceptability or non-acceptability of the
 22 ~~[statement]~~ **EIS**. If the **office** decides to make a recommendation, it shall submit the
 23 recommendation to the **applicant** and the **approving agency** within the ~~[thirty-day]~~⁵⁴⁹
 24 period requiring an **approving agency** to determine the acceptability of the final **EIS** ~~[and~~
 25 ~~described in section 343-5(c), HRS]~~⁵⁵⁰. Upon **acceptance** or non-acceptance by the
 26 **approving agency**, the **agency** shall notify the **applicant** of its determination, and
 27 provide specific findings and reasons. The **agency** shall also provide a copy of this
 28 determination to the **office** for publication ~~[of a notice]~~⁵⁵¹ in the **periodic bulletin**.

determinations. The office should make its recommendation as quickly as possible and ideally within the same thirty-day period that chapter 343, HRS, prescribes for applicant actions so that agency actions are not unduly delayed.

⁵⁴¹ Housekeeping.

⁵⁴² Housekeeping.

⁵⁴³ Housekeeping.

⁵⁴⁴ Provides clarity that "state and county" applies to both funds and lands.

⁵⁴⁵ Clarifies situations where a proposed action has mixed state and county lands or funds or both lands and funds.

⁵⁴⁶ Housekeeping.

⁵⁴⁷ Updates section reference.

⁵⁴⁸ Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

⁵⁴⁹ Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.

⁵⁵⁰ Unnecessary language.

⁵⁵¹ Housekeeping.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 **Acceptance** of the required **EIS** shall be a condition precedent to **approval** of the
 2 request and commencement of the proposed **action**. ~~[An approving agency shall take~~
 3 ~~prompt measures to determine the acceptability or non-acceptability of the applicant's~~
 4 ~~statement.]~~⁵⁵² The **agency** shall notify the **applicant** and the **office** of the **acceptance** or
 5 non-acceptance of the final **EIS** within thirty days of the final **EIS** ~~submitted to the~~⁰⁶⁵
 6 ~~agency~~⁵⁵³ [7];⁵⁵⁴ provided that the thirty-day period may, ~~at the request of the ap~~⁰⁶⁴ ~~licant,~~
 7 be extended ~~[at the request of the applicant]~~⁵⁵⁵ for a period not to exceed fifteen days.
 8 The request shall be made to the **accepting authority** in writing. Upon receipt of an
 9 **applicant's** ~~written~~⁵⁵⁶ request for an extension of the thirty-day **acceptance** period, the
 10 **accepting authority** shall notify the **office** and **applicant** in writing of its decision to grant
 11 or deny the request. The notice shall be accompanied by a copy of the **applicant's**
 12 request. An extension of the thirty-day **acceptance** period shall not be ~~[allowed]~~
 13 ~~granted~~⁵⁵⁷ merely for the convenience of the **accepting authority**. In the event that the
 14 **agency** fails to make a determination of **acceptance** or non-acceptance ~~[for]~~ ~~of~~⁵⁵⁸ the
 15 ~~[statement]~~ **EIS**⁵⁵⁹ within thirty days of the receipt of the final **EIS**, then the **statement**
 16 shall be deemed accepted.
 17
- 18 (f) A non-accepted **EIS** may be revised by a **proposing agency** or **applicant**. The revision
 19 shall take the form of a revised draft **EIS** ~~[document]~~⁵⁶⁰ which shall fully address the
 20 inadequacies of the non-accepted **EIS** and shall completely and thoroughly discuss the
 21 changes made. The requirements for filing, distribution, publication of availability for
 22 review, **acceptance** or non-acceptance, and notification and publication of acceptability
 23 shall be the same as the requirements prescribed by ~~[sections 11-200-20, 11-200-21, 11-~~
 24 ~~200-22, and 11-200-23]~~ ~~subchapters 4A and 10A~~⁵⁶¹ for an **EIS** submitted for **acceptance**.
 25 In addition, the ~~[revised draft EIS]~~ subsequent revised final **EIS**⁵⁶² shall be evaluated for
 26 acceptability on the basis of whether it satisfactorily addresses the findings and reasons
 27 for non-acceptance.
 28
 29

⁵⁵² Redundant when read with the following sentence that sets forth a timeline.

⁵⁵³ 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.

⁵⁵⁴ Housekeeping.

⁵⁵⁵ Housekeeping.

⁵⁵⁶ Connects to the previous sentence, clarifying that the request shall be made in writing.

⁵⁵⁷ Mirrors language within the provision.

⁵⁵⁸ Housekeeping.

⁵⁵⁹ Housekeeping.

⁵⁶⁰ Housekeeping.

⁵⁶¹ These subsections refer to filing and preparation of Draft and Final Environmental Impact Statements.

⁵⁶² Adds revised final EIS and deletes draft EISs because draft EISs are not reviewed for acceptability.

#064

Posted by **Choon James** on **10/30/2017** at **3:38pm**

the EA and EIS have a significant fundamental flaw.

The consultants for these statements are paid by the project owners. There is already an inherent conflict of interest.

There is too much pressure on the consultants to do a fair and honest job. What is the location of the project is true wrong and other alternatives are much more superior?

Have you seen a consultant reject a project and suggest an alternative be explored?

Agree: 0, Disagree: 0

#065

Posted by **Choon James** on **10/30/2017** at **3:48pm**

Comment

This does not serve the public good.

Short timelines benefit the developers. not the public.

This short timeline imposition favors the developers, not the government or the public.

Agree: 0, Disagree: 0

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

- 1 (g) A **proposing agency** or **applicant** may withdraw an **EIS** by **simultaneously**⁵⁶³ sending a
 2 [~~letter~~] written **notification**⁵⁶⁴ to the **office** **and to the accepting authority**⁵⁶⁵ informing the
 3 **office** of the **proposing**⁵⁶⁶ **agency's** or **applicant's** withdrawal. Subsequent resubmittal
 4 of the **EIS** shall meet all requirements for filing, distribution, publication, review,
 5 **acceptance**, and notification as a [~~new~~] **draft**⁵⁶⁷ **EIS**.
 6
 7 [Eff and comp _____] (Auth: HRS § 343-5, 343-6) (Imp: HRS § 343-5, 343-6)
 8

⁵⁶³ Requires the office and accepting authority to be notified of the withdrawal at the same time.

⁵⁶⁴ Removes the requirement for a letter and simply requires written notification, such as by email.

⁵⁶⁵ Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

⁵⁶⁶ Clarifies that the agency withdrawing the proposal is the proposing agency.

⁵⁶⁷ Replaces “new” with “draft” to clarify at which stage the withdrawn EIS resumes.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 11A Appeals**

- 2 • Describes how an applicant may appeal an agency determination of nonacceptance to
3 the council.

4 **§ 11-200A-29A Appeals to the Council**⁵⁶⁸

5 An **applicant**, within sixty days after a⁵⁶⁹ non-acceptance determination by the approving
6 agency under section 11-200A-28A⁵⁷⁰ of ~~[a statement]~~ a final EIS⁵⁷¹ ~~[by an agency]~~⁵⁷², may
7 appeal⁵⁷³ the non-acceptance to the **council**, which within thirty days⁵⁷⁴ of receipt of the appeal,
8 shall notify the **applicant** appealing of its determination to affirm the approving agency's non-
9 acceptance or to reverse it⁵⁷⁵. The council chairperson shall include the appeal on the agenda
10 of the next council meeting following receipt of the appeal.⁵⁷⁶ In any affirmation or reversal of an
11 appealed non-acceptance, the **council** shall provide the **applicant** and the **agency** with specific
12 findings and reasons for its determination. The **agency** shall abide by the **council's** decision.

13

14 [Eff and comp _____] (Auth: HRS § 343-5, 343-6) (Imp: HRS § 343-5, 343-6)

15

⁵⁶⁸ Formerly § 11-200-24, HAR (1996). All language in this section comes from section 11-200-24, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

⁵⁶⁹ Housekeeping.

⁵⁷⁰ Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 28A.

⁵⁷¹ Clarifies that the document is a final EIS.

⁵⁷² Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 28A.

⁵⁷³ Note that since 1996, while appeal to the council has been contemplated by applicants, no applicant has appealed a nonacceptance to the council.

⁵⁷⁴ Subsection 343-5(e) requires the council to notify the applicant of the council's determination within thirty days of receipt of the appeal.

⁵⁷⁵ Clarifies the Council's determination.

⁵⁷⁶ Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

Subchapter 12A National Environmental Policy Act

- Describes how to conduct environmental review for chapter 343, HRS, when the federal National Environmental Policy Act (NEPA) environmental review is also applicable.

§ 11-200A-30A National Environmental Policy Act Actions: Applicability to Chapter 343, HRS⁵⁷⁷

When ~~[the situation occurs where]~~⁵⁷⁸ a certain **action** will be subject both to the **National Environmental Policy Act** of 1969 (Public Law 91-190, as amended by Public Law 94-52 and Public Law 94-83; 42 U.S.C. [~~§~~] **sections**⁵⁷⁹ 4321-4347) and chapter 343, HRS, the following shall occur:

- (1) The **applicant** or **agency**, upon discovery of its proposed **action** being subject to both chapter 343, HRS, and the ~~[National Environmental Policy Act]~~ **NEPA**⁵⁸⁰, shall notify the responsible federal ~~[agency]~~ **entity**⁵⁸¹, the **office**, and any **agency** with a definite interest in the **action** (as prescribed by chapter 343, HRS) ~~[of the situation]~~.⁵⁸²
- (2) When a federal entity determines that the proposed **action** is exempt⁵⁸³ from review under the **NEPA**, this 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.⁵⁸⁴
- (3) When a federal entity issues a **FONSI** and concludes that an **EIS** is not required under the **NEPA**, this determination does not automatically constitute compliance

⁵⁷⁷ Formerly § 11-200-25, HAR (1996). All language in this section comes from section 11-200-25, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

⁵⁷⁸ Housekeeping.

⁵⁷⁹ Housekeeping.

⁵⁸⁰ Housekeeping.

⁵⁸¹ Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by statute to not include the federal government.

⁵⁸² Housekeeping.

⁵⁸³ The NEPA uses “exemption” and “exclusion” (along with “categorical”) interchangeably and in specific ways, depending on the federal agency. The use of “exempt” here is meant to capture “exemption” and “exclusion” under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

⁵⁸⁴ States that federal categorical exemptions do not automatically result in exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 with this chapter. In such cases, state and county agencies remain responsible for
 2 compliance with this chapter. However, the federal FONSI may be considered in
 3 the state or county agency determination.⁵⁸⁵

- 4
 5 (4) The [National Environmental Policy Act] **NEPA**⁵⁸⁶ requires that [draft
 6 statements]⁵⁸⁷ **EISs**⁵⁸⁸ be prepared by the responsible federal [agency] **entity**⁵⁸⁹.
 7 In the case of actions for which an EIS pursuant to the NEPA has been prepared
 8 by the responsible federal entity⁵⁹⁰, the draft and final federal EIS may be
 9 submitted to comply with this chapter,⁵⁹¹ so long as the federal EIS satisfies the
 10 EIS content requirements of this chapter and is not found to be inadequate under
 11 the NEPA: by a court; by the Council on Environmental Quality (or is at issue in
 12 pre-decision referral to Council on Environmental Quality) under the NEPA
 13 regulations; or by the administrator of the United States Environmental Protection
 14 Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857.⁵⁹²

- 15
 16 (5)⁵⁹³ When the responsibility of preparing an EIS is delegated to a state or county
 17 agency, this chapter shall apply in addition to federal requirements under the
 18 [National Environmental Policy Act] **NEPA**⁵⁹⁴. The office and state or
 19 county⁵⁹⁵ agencies shall cooperate with federal [agencies] **entities**⁵⁹⁶ to the fullest

⁵⁸⁵ Clarifies that a federal entity 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.

⁵⁸⁶ Housekeeping.

⁵⁸⁷ Language is applicable to draft and final.

⁵⁸⁸ Housekeeping.

⁵⁸⁹ Replaces defined term "agency" with entity to avoid confusion, because "agency" is defined by chapter 343, HRS to not include the federal government.

⁵⁹⁰ Replaces defined term "agency" with entity to avoid confusion, because "agency" is defined by chapter 343, HRS to not include the federal government.

⁵⁹¹ Based on Massachusetts' statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses this chapter's content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

⁵⁹² Adds language based on State of Washington Administrative Code to ensure that the federally-prepared statement meets federal standards for quality. The reference to the Clean Air Act is because that act authorizes the US Environmental Protection Agency (EPA) to review certain federal actions. If the EPA is not satisfied with the EIS, then it can refer it to the federal Council on Environmental Quality for mediation.

⁵⁹³ 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.

⁵⁹⁴ Housekeeping.

⁵⁹⁵ Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 extent possible to reduce duplication between federal and state requirements.
 2 This cooperation, to the fullest extent possible, shall include joint [~~environmental~~
 3 ~~impact statements~~] **EISs** with concurrent public review and processing at both
 4 levels of government. Where federal law has [~~environmental impact statement~~]
 5 **EIS** requirements in addition to but not in conflict with this chapter, the **office** and
 6 **agencies** shall cooperate in fulfilling the requirements so that one document shall
 7 comply with all applicable laws.

8
 9 (6) Where the NEPA process requires earlier or more stringent public review, [and
 10 processing] filing, and distribution than under this chapter, then that NEPA
 11 process shall satisfy this chapter so that duplicative consultation or review do not
 12 occur.⁵⁹⁷ The responsible federal entity's supplemental EIS requirements shall
 13 apply in these cases in place of this chapter's supplemental EIS requirements.⁵⁹⁸

14
 15 (7) In all **actions** where the use of state land or funds is proposed, the final
 16 [~~statement~~] **EIS** shall be submitted to the governor or an authorized
 17 representative. In all **actions** when the use of county land or funds is proposed
 18 and no use of state land or funds is proposed⁵⁹⁹, the final [~~statement~~] **EIS** shall be
 19 submitted to the mayor, or an authorized representative. The final [~~statement~~] **EIS**
 20 in these instances shall first be accepted by the governor or mayor (or an
 21 authorized representative), prior to the submission of the same to the
 22 [~~Environmental Protection Agency or~~]⁶⁰⁰ responsible federal [~~agency~~] **entity**⁶⁰¹.

23
 24 (8) Any **acceptance** obtained pursuant to [~~paragraphs (1) to (3)~~] this section⁶⁰² shall
 25 satisfy chapter 343, HRS, and no other [~~statement~~] **EIS** for the proposed **action**
 26 shall be required.

27
 28 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

⁵⁹⁶ Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by chapter 343, HRS to not include the federal government.

⁵⁹⁷ Addresses, for example, situations where a federal agency's regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

⁵⁹⁸ 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.

⁵⁹⁹ Clarifies the condition that requires the mayor or the mayor's authorized representative to be the accepting authority.

⁶⁰⁰ Clarifies that it is the responsible federal entity issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

⁶⁰¹ Replaces defined term “agency” with entity to avoid any confusion.

⁶⁰² 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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Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A

1 Subchapter 13A Supplemental Environmental Impact 2 Statements⁰⁶⁷

- 3 • Describes the conditions for when a supplemental EIS is required by consolidating all
4 language into one section⁰⁶⁶

5 § 11-200A-31A Supplemental Environmental Impact 6 Statements⁶⁰³

- 7 (a) [A statement] **An EIS** that is accepted with respect to a particular **action** is usually
8 qualified by the size, scope, location, intensity, use, and timing of the **action**, among
9 other things. [A statement] **An EIS** that is accepted with respect to a particular **action**
10 shall satisfy the requirements of this chapter and no [other] **supplemental** [statement]
11 **EIS** for that proposed **action** shall be required, to the extent that the **action** has not
12 changed substantively in size, scope, intensity, use, location or timing, among other
13 things. If there is any change in any of these characteristics which may have a
14 **significant effect**, the original **statement** that was changed shall no longer be valid
15 because an essentially different **action** would be under consideration and a
16 **supplemental** [statement] **EIS** shall be prepared and reviewed as provided by this
17 chapter. As long as there is no change in a proposed **action** resulting in individual or
18 **cumulative impacts** not originally disclosed, the [statement] **EIS** associated with that
19 **action** shall be deemed to comply with this chapter.⁶⁰⁴
- 20
- 21 (b) The **accepting authority** or **approving agency** in coordination with the original
22 **accepting authority** shall be responsible for determining whether a **supplemental**
23 [statement] **EIS** is required. This determination will be submitted to the **office** for
24 publication in the **periodic bulletin**. **Proposing agencies** or **applicants** shall prepare for
25 public review **supplemental** [statements] **EISs** whenever the proposed **action** for which
26 [a] **an**⁶⁰⁵ [statement] **EIS** was accepted has been modified to the extent that new or
27 different environmental **impacts** are anticipated. A **supplemental** [statement] **EIS** shall
28 be warranted when the scope of an **action** has been substantially increased, when the
29 intensity of environmental **impacts** will be increased, when the mitigating measures
30 originally planned [~~are~~] **will**⁶⁰⁶ not to be implemented, or where new circumstances or
31 evidence have brought to light different or likely increased environmental **impacts** not
32 previously dealt with.⁶⁰⁷

⁶⁰³ Combines §§ 11-200-26 - 29, HAR (1996).

⁶⁰⁴ Source: § 11-200-26, HAR (1996).

⁶⁰⁵ Housekeeping.

⁶⁰⁶ Housekeeping.

⁶⁰⁷ Source: § 11-200-27, HAR (1996).

#066

Posted by **Jesse** on **11/02/2017** at **7:38pm**

Comment

Short of a supplemental EIS, OEQC should consider including a re-evaluation process similar to 23 CFR § 771.129.

Agree: 0, Disagree: 0

#067

Posted by **Jesse** on **11/02/2017** at **7:32pm**

Question

Is there a way to address substantial changes to mitigation measures proposed in an EIS short of a supplemental EIS? Conditions change, mitigation proposed in the EIS may not be sufficient if unforeseen environmental conditions present themselves.

Agree: 0, Disagree: 0

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Environmental Council

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- 1
2
3
4 (d) The contents of the **supplemental [statement] EIS** shall be the same as required by this
5 chapter for the **EIS** and may incorporate by reference unchanged material from the same;
6 however, in addition, it shall fully document the proposed changes from the original **EIS**,
7 including changes in ambient conditions or available information that have a bearing on a
8 proposed **action** or its **impacts**, the positive and negative aspects of these changes, and
9 shall comply with the content requirements of [~~section 11-200-16~~] **of subchapter 10A**⁶⁰⁸ as
10 they relate to the changes.⁶⁰⁹
11
12 (e) The requirements of the thirty-day consultation, [~~filing~~] public notice **filing**⁶¹⁰, distribution,
13 the forty-five-day public review, comments and response, and **acceptance** procedures,
14 shall be the same for the **supplemental [statement] EIS** as is prescribed by this chapter
15 for an **EIS**.⁶¹¹
16
17 [Eff and comp _____] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)
18

⁶⁰⁸ Updates reference to relevant subchapter in chapter 11-200A, HAR.

⁶⁰⁹ Source: § 11-200-28, HAR (1996).

⁶¹⁰ Stylistic change to increase readability.

⁶¹¹ Source: § 11-200-29, HAR (1996).

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Subchapter 14A Retroactivity and Severability**

- 2 • Creates a retroactivity section to provide direction to agencies, applicants, and the
- 3 general public on how actions undergoing environmental review when HAR Chapter 11-
- 4 200A is enacted would remain under HAR Chapter 11-200 or transition to HAR Chapter
- 5 11-200A.
- 6 • Includes the severability clause.

7 **§ 11-200A-32A Retroactivity⁶¹²**

8 (a) The rules shall apply immediately upon taking effect, except as otherwise provided
 9 below.⁶¹³

10 (b) Hawaii Administrative Rules (HAR) chapter 11-200 shall continue to apply to
 11 environmental review of **agency** and **applicant actions** which began prior to the
 12 adoption of HAR chapter 11-200A, provided that:

13 (1) For **EAs**, if the **draft EA** was published by the **office**⁶¹⁴ prior to the adoption of
 14 HAR chapter 11-200A and has not received a determination within a period of five
 15 years from the implementation of HAR chapter 11-200A, then the **proposing**
 16 **agency** or **applicant** must comply with the requirements of HAR chapter 11-
 17 200A. All subsequent environmental review, including an **EISPN** must comply with
 18 HAR chapter 11-200A.

19 (2) For **EISs**, if the **EISPN** was published by the **office**⁶¹⁵ prior to the adoption of HAR
 20 chapter 11-200A and the final **EIS** has not been accepted within five years from
 21 the implementation of HAR chapter 11-200A, then the **proposing agency** or
 22 **applicant** must comply with the requirements of HAR chapter 11-200A.

23 (3) A judicial proceeding regarding the proposed **action** shall not count towards the
 24 five-year time period.⁶¹⁶

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⁶¹² Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or are undergoing it at the time the revised rules take effect.

⁶¹³ Provides clarification the rules shall take effect and apply in all situations except under the cases as described in the subsections of this section.

⁶¹⁴ Publication by the office requires that the document was submitted and met all requirements for publication.

⁶¹⁵ Publication by the office requires that the document was submitted and met all requirements for publication.

⁶¹⁶ Ensures that an action is not prevented from remaining under the 1996 rules (HAR chapter 11-200 (1996)) when it otherwise would be due to a judicial proceeding causing delay.

#068

Posted by **E Kechloian** on **11/18/2017** at **11:39pm**

Comment

What if the scope or size of the action has changed substantially since the EISPN was published?

Agree: 0, Disagree: 0

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 (c) **Exemption lists** that have received concurrence under HAR chapter 11-200 may be
 2 used for a period of seven years after the adoption of HAR chapter 11-200A, during
 3 which time the **agency** must revise its list and obtain concurrence from the **council** in
 4 conformance with HAR chapter 11-200A.⁶¹⁷

5
 6 [Eff and comp _____] (Auth: HRS § 343-6) (Imp: HRS § 343-6)
 7

⁶¹⁷ Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action and reassign exemptions to the appropriate general types.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 § 11-200A-33A Severability⁶¹⁸

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

7 [Eff and comp _____] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-6, 343-8)

8

⁶¹⁸ Formerly § 11-200-30, HAR (1996). All language in this section comes from § 11-200-30, HAR (1996) and no amendments are proposed.

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Environmental Council

Potential Amendments to HAR Chapter 11-200, Environmental Impact StatementsThis reorganization is referred to as HAR Chapter 11-200A1 **Note**⁶¹⁹

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

10
11 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It
12 has not been compiled.

⁶¹⁹ This Note would be revised following public hearing on the draft rules and finalization for enacting into law.