

# Version 0.4 Ramseyer

Proposed Revisions to Hawaii Administrative Rules  
Title 11 Department of Health Chapter 200  
Environmental Impact Statement Rules

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

Draft

## How to Read Version 0.4

Version 0.4 presents proposed amendments to the Hawaii Administrative Rules (HAR) Chapter 11-200, Environmental Impact Statements (EISs), which this document refers to as the “1996 Rules”. Because the proposed reorganization and various revisions, the Environmental Council (“Council”) intends to repeal Chapter 11-200, HAR and promulgate a new chapter. The new chapter would be numbered Chapter 11-200.1, HAR, which is reflected in this version. The proposed chapter is referred to as the “Proposed Rules” in Version 0.4.

Version 0.4 presents a similar organization and formatting as Version 0.3. It does not carry forward all proposed additions and deletions considered in versions 0.1, 0.2, or 0.3. Version 0.4 only shows changes with respect to the existing 1996 Rules, including those changes proposed in and retained from versions 0.1, 0.2, and 0.3 and those newly proposed in Version 0.4.

Unlike the previous versions, Version 0.4 does not have footnotes. Instead, it has a companion document providing the rationale for changes between the 1996 Rules and Version 0.4.

Version 0.4 provides a “Ramseyer-like” style of formatting to enhance understanding of the proposed changes from the 1996 Rules. The style adapts the Legislative Reference Bureau format, while enhancing readability.

- Defined terms are bolded throughout the text to draw the reader’s attention to the fact that the term has a particular meaning within the context of the Proposed Rules.
- Pursuant to Ramseyer style, underlining indicates language that is moved between sections (i.e., 1996 language from a section other than the one that the proposed section correlates to) and new language introduced in Version 0.4 of the Council’s proposed rules working draft.
- Highlighting, in addition to underlining, distinguishes new language introduced in Version 0.4 of the council’s proposed rules working draft from 1996 rules language that has been moved. To help contrast with Version 0.3, Version 0.4 uses a magenta highlight color.
- Pursuant to Ramseyer style, deletions of 1996 rules language are bracketed and struck-through.
- Deletions of language that was newly inserted in versions 0.1, 0.2, or 0.3 have been completely removed to present a clean document that captures the language retained to-date in the working drafts. In some cases, the new language in Version 0.4 may be identical or revised language considered in previous working drafts.

**Examples of Formatting**

<p>Original 1996 rules language that is in a proposed section that correlates with an existing 1996 rules section.</p>	<p>The original 1996 language looks like this without any formatting.</p>
<p>Original 1996 rules language that has been 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.</p>	<p><u>Moved original 1996 language looks like this.</u></p>
<p>New language in Version 0.4, including language that was introduced and retained from versions 0.1, 0.2, or 0.3.</p>	<p><u>New language from Version 0.4 is underlined and highlighted in a light orange.</u></p>
<p>Original 1996 rules language that is proposed to be deleted is bracketed and struck-through.</p>	<p>1996 Rules language that is to be deleted [<del>looks like this</del>].</p>
<p><b>Example #1:</b> Original 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)”).</p>	<p>The purpose of this chapter is to provide <b>agencies</b> and <b>persons</b> with procedures, specifications [of] <u>regarding the contents of environmental assessments (EAs) and environmental impact statements (EISs)</u>, and criteria and definitions of statewide application.</p>
<p><b>Example #2:</b> 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”).</p>	<p>The <b>office</b> shall publish notice of [<del>agency</del>] <u>withdrawals and the rationale in accordance with [<del>section 11-200-3</del>] this subchapter.</u></p>

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## Subchapter 1 Purpose

### § 11-200.1-1 Purpose

- (a) Chapter 343, Hawaii Revised Statutes, (HRS), establishes a system of environmental review at the state and county levels ~~[which]~~ that shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide **agencies** and **persons** with procedures, specifications ~~[of]~~ regarding the contents of **environmental assessments (EAs)** and **environmental impact statements (EISs)**, and criteria and definitions of statewide application.
- (b) ~~[An EIS]~~ EAs and EISs [is] are meaningless without the conscientious application of the ~~[EIS]~~ environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies and applicants shall ensure that ~~[statements]~~ EAs and EISs are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse **effects** and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed **action** prior to decision making.
- (c) In preparing any document, proposing agencies and applicants shall:
- (1) [make] Make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, of the document;
  - (2) [care shall be taken] Take care to concentrate on important issues and to ensure that the document remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference; and
  - (3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process.

[Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-1, 343-6)

## Subchapter 2 Definitions

### § 11-200.1-2 Definitions

As used in this chapter:

"**Acceptance**" means a formal determination ~~[of acceptability]~~ that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an **environmental impact statement (EIS)**, ~~[adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement]~~ as prescribed by section 11-200.1-28. **Acceptance** does not mean that the **action** is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of **acceptance** is required prior to implementing or approving the **action**.

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

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

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

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

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

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

"**Approving agency**" means an **agency** that issues an **approval** prior to ~~[actual]~~ implementation of an **applicant action**.

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

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

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

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

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

"**EIS preparation notice**[<sup>1</sup>]", [or] "**EISPN**", or "**preparation notice**" means a determination [based on an environmental assessment that the subject] **that an action** may have a **significant effect** on the **environment** and, therefore, will require the preparation of an [environmental impact statement] **EIS**, based on either an **EA** or an **agency's** judgment and experience that the proposed **action** may have a **significant effect** on the **environment**.

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

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

"**Environment**" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed **action**, including land,



human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

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

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

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

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

**"Exemption list"** means a list prepared by an **agency** pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15. An agency may exempt activities in part one and actions in part two, subject to the conditions of this chapter and chapter 343, HRS, from preparation of an EA.

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

**"Final environmental assessment"** means either the ~~[environmental assessment]~~ **EA** submitted by a **proposing agency** or an **approving agency** following the public review and comment period for the **draft** ~~[environmental assessment]~~ **EA** and in support of either a **FONSI** or ~~[a preparation notice]~~ an **EISPN.** ~~[determination; or the environmental assessment submitted by a~~

~~proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.]~~

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

“Impacts” means the same as “effects”.

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

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

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

"Office" means the Office of Environmental Quality Control.

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

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

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

"Primary impact<sub>1</sub>" or "primary effect<sub>1</sub>" or "direct impact<sub>1</sub>" or "direct effect" means **effects** [which] that are caused by the **action** and occur at the same time and place.

“Project” means a discrete, planned undertaking that has a defined beginning and end time, is site specific, and has a specific goal or purpose.

“Program” means a series of one or more projects to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A program may include: a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; separate projects having generic or common impacts; an entire

plan having wide application or restricting the range of future alternative policies or actions, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; implementation of a single project or multiple projects over a long timeframe; or implementation of a single project over a large geographic area.

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

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

"**Significant effect**" or "**significant impact**" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the [state's] State's environmental policies or long-term environmental goals and guidelines as established by law, [or] adversely affect the economic welfare, [or] social welfare, or cultural practices of the community and State, or are otherwise set forth in section [11-200-12] 11-200.1-14 [of this chapter].

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

A "**trigger**" means any use or activity listed in section 343-5(a), HRS, requiring preparation of an environmental assessment.

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

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

## Subchapter 3 Computation of Time

### § 11-200.1-3 Computation of Time

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

[Eff ] (Auth: HRS §§ 1-29, 8-1, 343-6) (Imp: HRS §§ 1-29, 8,-1, 343-6)

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## Subchapter 4 Filing and Publication in the Periodic Bulletin

### § 11-200.1-4 Periodic Bulletin

- (a) The **periodic bulletin** shall be issued on the eighth and twenty-third days of each month.
- (b) [The office shall inform the public through the publication of a periodic bulletin of the following:] When filed in accordance with section 11-200.1-5, the **office** shall publish the following in the **periodic bulletin** to inform the public of **actions** undergoing chapter 343, HRS environmental review and the associated public comment periods provided here or elsewhere by statute:
- (1) Determinations that an existing exemption, **FONSI**, or accepted **EIS** satisfies chapter 343, HRS for a proposed activity;
  - (2) **Exemption notices** and lists of actions an agency has determined to be exempt;
  - (3) [Notices filed by agencies of the availability of environmental assessments] Draft **EAs** and appropriate **addendum** documents for public review and [comments] thirty-day comment period, including notice of an anticipated **FONSI**;
  - (4) Final **EAs**, including notice of a **FONSI**, or an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting**, and appropriate **addendum** documents;
  - (5) Notice of an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting**, and appropriate **addendum** documents;
  - (6) [Notices filed by agencies of] Evaluations and determinations that supplemental [statements] **EISs** are required or not required;
  - (7) [The availability of statements] Draft **EISs**, including draft **supplemental [statements] EISs**, and appropriate **addendum** documents for public review and forty-five day comment period;
  - (8) Final **EISs**, including final **supplemental EISs**, and appropriate **addendum** documents;
  - (9) [The] Notice of **acceptance** or non-acceptance of [statements] **EISs**, including **supplemental EISs**;
  - (10) Republication of any chapter 343, HRS notices, documents, or determinations;
  - (11) Notices of withdrawal of any chapter 343, HRS notices, documents, or determinations;
  - (12) Other notices required by the rules of the **council**.
- (c) When filed in accordance with this subchapter, the **office** shall publish other notices required by statute or rules, including those not specifically related to chapter 343, HRS.
- (d) The **office** may, on a space or time available basis, publish other notices not specifically related to chapter 343, HRS.

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

## § 11-200.1-5 Filing Requirements for Publication and Withdrawal

- (a) Anything required to be published in the **bulletin** shall be submitted to the **office** before the close of business four business days prior to the **issue date**.
- (b) All submittals to the **office** for publication in the **bulletin** shall be accompanied by a completed informational form [which] that provides whatever information the **office** needs to properly notify the public. The information requested may include the following: the title of the **action**; the islands affected by the proposed **action**; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including for applicants, the **approval** requiring chapter 343, HRS environmental review; whether the proposed **action** is an **agency** or an **applicant action**; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses, email addresses, phone numbers and contact persons as applicable of the **accepting authority**, the **proposing agency**, the **approving agency**, the **applicant**, and the consultant; and a brief narrative summary of the proposed **action** [which] that provides sufficient detail to convey the full impact of the proposed **action** to the public.
- (c) The **office** shall not accept untimely submittals or revisions thereto after the **issue date deadline** for which the submittal was originally filed has passed.
- (d) In accordance with the **agency's** rules or, in the case of an **applicant EIS**, the **applicant's** judgment, anything filed with the **office** may be withdrawn by the **agency** or **applicant** that filed the submittal with the **office**. To withdraw a submittal, the **agency** or **applicant** shall submit to the **office** a written letter informing the **office** of the withdrawal. The **office** shall publish notice of [agency] withdrawals and the withdrawal rationale in accordance with [section 11-200-3] this subchapter.
- (e) To be published in the **bulletin**, all submittals to the **office** shall meet the filing requirements in subsections (a)-(c) and be prepared in accordance with this chapter and chapter 343, HRS, as appropriate. The following shall meet additional filing requirements:
- (1) When the document is a draft **EA** with an anticipated **FONSI**, the **proposing agency** or **approving agency** shall:
- (A) File the document and determination with the **office**;
- (B) Deposit, or require the **applicant** to deposit, concurrently with the filing [paragraph (5)] to the **office**, one paper copy of the draft [environmental assessment] **EA** at the nearest state library in each county in which the



- proposed **action** is to occur and one paper copy at the Hawaii Documents Center; and
- (C) Distribute, concurrently [with the filing in paragraph (5),] the draft [environmental assessment] EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the **proposing agency** reasonably believes to be affected;
- (2) When the document is a **final EA** with a **FONSI**, the **proposing agency** or **approving agency** shall:
- (A) Incorporate, or require the **applicant** to incorporate, the **FONSI** into the contents of the **final EA**, as prescribed in section 11-200.1-21, section 11-200.1-22, and section 11-200.1-23;
- (B) File the **final EA** and the incorporated **FONSI** with the **office**; and
- (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **final EA** with the Hawaii Documents Center;
- (3) When the document is a **final EA** with an **EISPN**, the **proposing agency** or **approving agency** shall:
- (A) Incorporate, or require the **applicant** to incorporate, the **EISPN** into the contents of the **final EA**, as prescribed in section 11-200.1-21, section 11-200-22, and section 11-200.1-23A;
- (B) File the incorporated **EISPN** with the **final EA**; and
- (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the **final EA** with the Hawaii Documents Center;
- (4) When the notice is an **EISPN** without the preparation of an **EA**, the **proposing agency** or **approving agency** shall:
- (A) File the **EISPN** with the **office**; and
- (B) Deposit, or require the applicant to deposit, concurrently with the filing to the **office**, one paper copy of the **EISPN** at the nearest state library in each county in which the proposed action is to occur and one paper copy at the Hawaii Documents Center;
- (5) When the document is a draft **EIS**, the **proposing agency** or **applicant** shall:
- (A) [sign] Sign and date [the original copy of] the draft [or final] **EIS** [and shall];
- (B) Indicate that the draft [statement] **EIS** and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in [sections 11-200-17 and 11-200-18, as appropriate] subchapter 10;
- (C) File the draft **EIS** with the **accepting authority** and the **office** simultaneously; and
- (D) Deposit, or require the **applicant** to deposit, concurrently with the filing to the **office**, one paper copy of the draft **EIS** at the nearest state library in each county in which the proposed **action** is to occur and one paper copy at the Hawaii Documents Center.; and

- (E) Submit to the office one true and correct copy of the original audio file, at standard quality, of all oral comments received at the time designated within the EIS public scoping meeting(s) for receiving oral comments:
- (6) When the document is a final **EIS**, the **proposing agency or applicant** shall:
- (A) [sign] Sign and date [the original copy of] the [draft or] final **EIS** [and shall];
- (B) Indicate that the final [statement] **EIS** and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in [sections 11-200-17 and 11-200-18, as appropriate] subchapter 10; and
- (C) File the final **EIS** with the **accepting authority** and the **office** simultaneously;
- (7) When the notice is an **acceptance** or non-acceptance of a final **EIS**, the **accepting authority** shall:
- (A) File the notice of **acceptance** or non-acceptance of a final **EIS** with the **office**; and
- (B) Simultaneously transmit the notice to the **proposing agency or applicant**;
- (8) When the notice is of the withdrawal of an anticipated **FONSI**, **FONSI**, or **EISPN** the **proposing agency or approving agency** shall include a rationale of the withdrawal specifying any associated documents to be withdrawn;
- (9) When the notice is of the withdrawal of a draft **EIS** or final **EIS**, the **proposing agency or applicant** shall simultaneously file the notice with the **office** and submit the notice with **accepting authority**; and
- (10) When the submittal is a changed version of a notice, document, or determination previously published and withdrawn, the submittal shall be filed as the "second" submittal, or "third" or "fourth", as appropriate. (Example: A draft **EIS** is withdrawn and changed. It is then filed with the **office** for publication as the "second draft **EIS**" for the particular **action**.)

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

## § 11-200.1-6 Republication of Notices, Documents, and Determinations

- (a) An **agency or applicant** responsible for filing a chapter 343, HRS notice, document, or determination may file an unchanged, previously published submittal in the **bulletin** provided that the filing requirements of this subchapter and any other publication requirements set forth in this chapter or chapter 343, HRS are satisfied.
- (b) When the publication of a previously published chapter 343, HRS notice, document, or determination involves a public comment period under this chapter or chapter 343, HRS:
- (1) The public comment period shall be as required for that notice, document, or determination pursuant to this chapter or chapter 343, HRS or as otherwise



statutorily mandated. (For example, publication of an unchanged draft EIS initiates a forty-five day public comment period upon publication in the bulletin.); and

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

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

Draft

## Subchapter 5 Responsibilities

### § 11-200.1-7 Identification of Approving Agency and Accepting Authority

- (a) Whenever an **agency** proposes an **action**, the ~~[final]~~ authority to accept ~~[a statement]~~ an **EIS** shall rest with:
- (1) The governor, or ~~[an]~~ the governor's authorized representative, whenever an **action** proposes the use of state lands or ~~[the use of]~~ state funds or ~~[,]~~ whenever a state **agency** proposes an **action** ~~[within]~~ under section ~~[11-200-6(b)]~~ 11-200.1-9; or
  - (2) The mayor, or ~~[an]~~ the mayor's authorized representative, of the respective county whenever an **action** proposes only the use of county lands or county funds. In the event that an **action** involves state and county lands, 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**.
- (b) Whenever an **applicant** proposes an **action**, the authority for requiring an **EA** or [statements] **EIS**, ~~[and for]~~ making a determination regarding any required **EA**, and accepting any required [statements] **EIS** [that have been prepared] shall rest with the **approving agency** [initially receiving and agreeing] that initially received and agreed to process the request for an approval. With respect to **EISs**, this **approving agency** is also called the **accepting authority**.
- (c) In the event that ~~[there is]~~ more than one **agency** ~~[that]~~ is proposing the **action** or, in the case of **applicants**, more than one **agency** has jurisdiction over the **action**, and these **agencies** are unable to agree as to which **agency** has the responsibility for complying with ~~[section 343-5(c)]~~ chapter 343, HRS, [the office, after consultation with] the **agencies** involved, shall consult with one another to determine which **agency** is responsible for compliance. In making the ~~[determination]~~ decision, the ~~[office]~~ **agencies** shall take into consideration, including, but not limited to, the following factors:
- (1) ~~[The]~~ Which **agency** [with the] has the greatest responsibility for supervising or approving the **action** as a whole;
  - (2) ~~[The]~~ Which **agency** [that] can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
  - (3) ~~[The]~~ Which **agency** [that] has special expertise or greatest access to information relevant to the **action's** implementation and **impacts**; ~~[and]~~
  - (4) The extent of participation of each **agency** in the **action**~~[,]~~; and
  - (5) In the case of an **action** with proposed use of state or county lands or funds, which **agency** has the most land or funds involved in the **action**.

- (d) In the event that there is more than one **agency** that is proposing the **action**, or in the case of **applicants**, more than one **agency** has jurisdiction over the **action**, and after applying the criteria in subsection (c) these **agencies** are unable to agree as to which **agency** has the responsibility for complying with chapter 343, HRS, the **office**, after consultation with the **agencies** involved, shall apply the same considerations in subsection (c) to decide which **agency** is responsible for compliance.
- (e) The **office** shall not serve as the **accepting authority** for any **proposed agency** or **applicant action**.
- (f) The **office** may provide recommendations to the **agency** or **applicant** responsible for the ~~environmental assessment~~ **EA** or **EIS** regarding any applicable administrative content requirements set forth in this chapter.

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

## Subchapter 6 Applicability

### § 11-200.1-8 Applicability of Chapter 343, HRS to Agency Actions

- (a) Chapter 343, HRS, environmental review shall be required for any **agency action** that includes one or more **triggers** as identified in section 343-5(a), HRS.
- (1) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing **from** the State or **a** county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.
  - (2) [For agency actions, chapter 343, HRS, exempts from applicability] Under section 343-5(a), HRS, any feasibility or planning study for possible future programs or projects **[which]** **that** the agency has not approved, adopted, or funded **are** **exempted from chapter 343, HRS, environmental review.** Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future **[assessment]** **EA** or subsequent **[statement]** **EIS**. If **[, however,]** the planning and feasibility studies involve testing or other actions **[which]** **that** may have a significant impact on the environment, **[then]** an **[environmental assessment]** **EA** or **EIS** shall be prepared.
  - (3) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11), HRS or section 205-4.5(a)(13), HRS, must perform environmental review only when required under section 205-5(b), HRS.
- (b) When an **agency** proposes an **action** during a governor-declared state of emergency, the **proposing agency** shall document in its records that the **emergency action** was undertaken pursuant to a specific emergency proclamation. If the **emergency action** has not **substantially commenced** within sixty days of the emergency proclamation, the **action** will be subject to chapter 343, HRS.
- (c) In the event of a sudden unexpected emergency causing or likely to cause loss or damage to life, health, property, or essential public service, but for which a declaration of a state of emergency has not been made, a **proposing agency** undertaking an **emergency action** shall document in its records that the **emergency action** was undertaken pursuant to a specific emergency and shall include the **emergency action** on its list of **exemption notices** for publication by the **office** in the **bulletin** pursuant to section 11-200.1-17(d) and subchapter 4.

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

## § 11-200.1-9 Applicability of Chapter 343, HRS to Applicant Actions

- (a) Chapter 343, HRS, environmental review shall be required for any **applicant action** that:
- (1) Requires one or more ~~agency~~ **approvals** prior to implementation; and
  - (2) Includes one or more **triggers** identified in section 343-5(a), HRS.
    - (A) Under Chapter 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.
    - (B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11), HRS or section 205-4.5(a)(13), HRS, must perform environmental review only when required under section 205-5(b), HRS.
- (b) Chapter 343, HRS does not require environmental review for **applicant actions** when:
- (1) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the **applicant** for the primary action shall submit documentation from the appropriate **agency** confirming that no further discretionary approvals are required.
  - (2) As used in this subsection:
    - (A) "Discretionary consent" means an **action** as defined in section 343-2; or an approval from a decision-making authority in an agency, which approval is subject to a public hearing.
    - (B) "Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.
    - (C) "Primary action" means an **action** outside of the highway or public right-of-way that is on private property.
    - (D) "Secondary action" means an **action** involving infrastructure within the highway or public right-of-way.

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

## § 11-200.1-10 Multiple or Phased Actions

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

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

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

## § 11-200.1-11 Use of Prior Exemptions, Findings of No Significant Impact, or Accepted Environmental Impact Statements to Satisfy Chapter 343, HRS for Proposed Activities

- (a) When an **agency** is considering whether a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS for a proposed activity, the **agency** may determine that additional environmental review is not required because:
  - (1) The proposed activity was a component of, or is substantially similar to, an action that received an exemption, **FONSI**, or an accepted **EIS** (for example, a **project** that was analyzed in a programmatic **EIS**);
  - (2) The proposed activity is anticipated to have **direct, indirect, and cumulative effects** similar to those analyzed in a prior exemption, **final EA**, or accepted **EIS**;  
and
  - (3) In the case of a **final EA** or an accepted **EIS**, the proposed activity was analyzed within the range of alternatives.
- (b) When an **agency** determines that a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS for a proposed activity, the **agency** may submit a brief written rationale to the **office** for publication pursuant to section 11-200.1-4 and the proposed activity may proceed without further chapter 343, HRS environmental review.
- (c) When an **agency** determines that the proposed activity warrants environmental review, the **agency** may submit a brief written rationale to the **office** for publication pursuant to section 11-200.1-4 and the **agency** shall proceed to comply with subchapter 7.

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

## Subchapter 7 Determination of Significance

### § 11-200.1-12 Consideration of Previous Determinations and Accepted Statements

- [(a)] [~~Chapter 343, HRS, provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required, and previously accepted statements.~~]
- [(b)] A proposing agency or applicant may incorporate information or analysis from a relevant [Previous] prior [determinations] exemption notice, final EA, [and previously accepted statements may be incorporated] or accepted EIS into an exemption notice, EA, EISPN, or EIS, [by applicants and agencies] for a proposed action whenever the information or analysis [contained therein] is pertinent [to the decision at hand] and has logical relevancy and bearing to the proposed action [being considered]. (For example, a project that was broadly considered as part of an accepted programmatic EIS may incorporate relevant portions from the accepted programmatic EIS by reference.)
- [(c)] [~~Agencies shall not, without considerable pre-examination and comparison, use past determinations, and previous statement to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted statements. Further, when previous determinations and previous statements are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered.~~]
- [Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)



## § 11-200.1-13 Significance Criteria

- (a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment~~[;]~~ and shall evaluate the overall and cumulative effects of an action.
- (b) In determining whether an **action** may have a **significant effect** on the **environment**, the **agency** shall consider every phase of a proposed **action**, the expected ~~[consequences]~~ **impacts**, both **primary** and **secondary**, and the **cumulative** as well as the short-term and long-term **effects** of the **action**. In most instances, an **action** shall be determined to have a **significant effect** on the **environment** if it is likely to:
- (1) ~~[Involves an irrevocable commitment to loss or destruction of any natural or cultural resource]~~ Irrevocably commit a natural, cultural, or historic resource;
  - (2) ~~[Curtails]~~ Curtail the range of beneficial uses of the **environment**;
  - (3) ~~[Conflicts]~~ Conflict with the ~~[state's]~~ State's ~~[long-term]~~ environmental policies or long-term environmental goals ~~[and guidelines as expressed in chapter 344, HRS, or other laws,] as established by law [and any revisions thereof and amendments thereto, court decisions, or executive orders];~~
  - (4) ~~[Substantially affects]~~ Have a substantial adverse effect on the economic welfare, ~~[or] social welfare, or cultural practices~~ of the community or State;
  - (5) ~~[Substantially affects]~~ Have a substantial adverse effect on public health;
  - (6) ~~[Involves]~~ Involve adverse secondary impacts, such as population changes or **effects** on public facilities;
  - (7) ~~[Involves]~~ Involve a substantial degradation of environmental quality;
  - (8) Is individually limited but cumulatively has ~~[considerable]~~ substantial adverse effect upon the environment or involves a commitment for larger actions;
  - (9) ~~[Substantially affects]~~ Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
  - (10) ~~[Detrimentially affects]~~ Have a substantial adverse effect on air or water quality or ambient noise levels;
  - (11) ~~[Affects]~~ Have a substantial adverse effect on or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
  - (12) ~~[Substantially affects]~~ Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or,
  - (13) ~~[Requires]~~ Require substantial energy consumption or emit substantial greenhouse gases.

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



## § 11-200.1-14 Determination of Level of Environmental Review

- (a) For an **agency action**, through its judgment and experience, ~~[an agency proposing an action]~~ a **proposing agency** shall assess 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, to determine the level of environmental review necessary for the **action**.
- (b) For an applicant **action**, within thirty days from the receipt of the **applicant's** request for **approval** to the **approving agency**, through its judgment and experience, an **approving agency** shall assess 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, to determine the level of environmental review necessary for the **action**.
- (c) If the **proposing agency** or **approving agency** determines, through its judgment and experience, that the **action** will individually and cumulatively probably have minimal or no **significant effects**, and the **action** is one that is eligible for exemption under subchapter 8, then the **agency** or the **approving agency** in the case of an **applicant** may prepare an **exemption notice** in accordance with subchapter 8.
- (d) If the **proposing agency** or **approving agency** determines, through its judgment and experience, that the **action** is not eligible for an exemption, then the **proposing agency** shall prepare or the **approving agency** shall require the **applicant** to prepare an **EA** beginning with a **draft EA** in accordance with subchapter 9, unless:
- (1) In the course of preparing the **draft EA**, the **proposing agency** or **approving agency** determines, through its judgment and experience, that the **action** may have a **significant effect** and therefore require preparation of an **EIS**, then the **proposing agency** may prepare, or the **approving agency** may authorize the **applicant** to prepare an **EA** as a **final EA** to support the determination prior to preparing or requiring preparation of an **EIS** in accordance with subchapter 10; or
  - (2) The **proposing agency** or **approving agency** determines, through its judgment and experience that an **EIS** is likely to be required, then the **proposing agency** may choose, or an **approving agency** may authorize an **applicant** to prepare an **EIS** in accordance with subchapter 10, beginning with preparation of an **EISPN**.

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

# Subchapter 8 Exempt Actions, List, and Notice Requirements

## § 11-200.1-15 General Types of Actions Eligible for Exemption

- (a) ~~[Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.]~~ Some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.
- (b) **Actions** declared exempt from the preparation of an ~~[environmental assessment]~~ **EA** under this ~~[section]~~ subchapter are not exempt from complying with any other applicable statute or rule.
- (c) The following ~~[list represents exempt classes of action]~~ general types of actions are eligible for exemption:
- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving ~~[negligible or no]~~ minor expansion or minor change of use beyond that previously existing;
  - (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
  - (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
    - (A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units;
    - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
    - (C) Stores, offices, and restaurants designed for total occupant load of twenty ~~[persons]~~ individuals or ~~[less]~~ fewer per structure, if not in conjunction with the building of two or more such structures; and
    - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or

appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

- (4) Minor alterations in the conditions of land, water, or vegetation;
- (5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities ~~[which]~~ that do not result in a serious or major disturbance to an environmental resource;
- ~~[(6)]~~ Construction or placement of minor structures accessory to existing facilities;
- ~~[(7)]~~ Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
- ~~[(8)]~~ Demolition of structures, except those structures ~~[located on any historic site as designated in]~~ that are listed on or that meet the criteria for listing on the national register or Hawaii ~~[register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS]~~ Register of Historic Places;
- ~~[(9)]~~ Zoning variances except shoreline set-back variances; ~~[and]~~
- ~~[(10)]~~ Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions;
- ~~[(11)]~~ Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond ~~[that]~~ previously existing uses, and for which the legislature has appropriated or otherwise authorized funding ~~[-];~~ and
- (10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county **proposing agency** or **approving agency**, that meets the following:
  - (A) Has the use of state or county lands or funds or is within Waikiki as the sole **triggers** for compliance with chapter 343, HRS;
  - (B) As proposed conforms with the existing state urban land classification;
  - (C) As proposed is consistent with the existing county zoning classification provided that allows housing; and
  - (D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area.
- (d) All exemptions under ~~[the classes in this section-]~~ subchapter 8 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**.
- (e) Any **agency**, at any time, may request that a new exemption ~~[class]~~ type be added, or that an existing one be amended or deleted. The request shall be submitted to the **council**, in writing, and contain detailed information to support the request as set forth in section 11-201-16, HAR, environmental **council** rules.

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

## § 11-200.1-16 Exemption Lists

- (a) Each **agency**, through time and experience, ~~[shall]~~ may develop its own **exemption list** consistent with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of
- (1) Routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or **cumulatively** adversely affect the **environment** more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS environmental review. Examples of routine activities and ordinary functions may include, among others: routine repair, routine maintenance, purchase of supplies, and continuing administrative activities involving personnel only, nondestructive data collection, installation of routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveyances; and
  - (2) ~~[specific types of actions which fall within the exempt classes as long as these lists are consistent with both the letter and intent expressed in these exempt classes and chapter 343, HRS]~~ Types of actions that the **agency** considers to be included within the exempt general types listed in section 11-200.1-15.
- (b) An **agency** may use part one of its **exemption list**, developed pursuant to (a)(1), to exempt a specific activity from preparation of an **EA** and the requirements of section 11-200.1-17 because the agency considers the specific activity to be de minimis.
- (c) An **agency** may use part two if its **exemption list**, developed pursuant to (a)(2), to exempt from preparation of an **EA** a specific **action** that the **agency** determines to be included under the types of **actions** in its **exemption list**, provided that the **agency** fulfills the **exemption notice** requirements set forth in section 11-200.1-17 of this subchapter and chapter 343, HRS.
- (d) These **exemption lists** and any amendments to the **exemption lists** shall be submitted to the **council** for review and **concurrence** no later than seven years after the previous **concurrence**, provided that, in the event the **council** is unable to meet due to quorum when a **concurrence** for an **agency exemption list** is seven years or older, the **agency** may submit a letter to the **council** acknowledging that the existing **exemption list** is still valid. Upon attaining quorum, the **council** shall review the **exemption list** for **concurrence**. ~~[The lists shall be reviewed periodically by the **council**.]~~ The **council** may review **agency exemption lists** periodically.

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

## § 11-200.1-17 Exemption Notices

- (a) Each **agency** shall ~~[maintain records of]~~ create an **exemption notice** for an **action** that it has found to be exempt from the requirements for preparation of an **[environmental assessment] EA pursuant to section 11-200.1-16(a)(2) or that an **agency** considers to be included within a general type of action pursuant to section 11-200.1-15.** ~~[and each agency shall produce the exemption notices for review upon request].~~ An **agency** may create an **exemption notice** for an activity that is has found to be exempt from the requirements for preparation of an **EA pursuant to section 11-200.1-16(a)(1) or that an **agency** considers to be a routine activity and ordinary function within the jurisdiction or expertise of the **agency** that by its nature does not have the potential to individually or **cumulatively** adversely affect the environment more than negligibly.**
- (b) To declare an exemption prior to implementing an **action**, an **agency** shall undertake an analysis to determine whether the **action** merits exemption pursuant to section 11-200.1-15 and is consistent with one or several of the general types listed in section 11-200.1-15 or the agency's **exemption list** produced in accordance with section 11-200.1-16, and whether significant **cumulative impacts** or particularly sensitive environments would make the exemption inapplicable. An **agency** shall obtain the advice of other outside **agencies** or individuals having jurisdiction or expertise on the propriety of the exemption. This analysis and consultation shall be documented in an **exemption notice**. Unless consultation and publication are not required under subsection (c), the **agency** shall publish the **exemption notice** with the **office** through the filing process set forth in subchapter 4.
- (c) Consultation regarding and publication of an **exemption notice** is not required when:
- (1) The **agency** has created an **exemption list** pursuant to section 11-200.1-16;
  - (2) The **council** has concurred with the **agency's exemption list** no more than seven years before the **agency** implements the **action** or authorizes an **applicant** to implement the **action**;
  - (3) The **action** is consistent with the letter and intent of the **agency's exemption list**;  
and
  - (4) The **action** does not have any potential, individually or **cumulatively**, to produce **significant impacts**.
- (d) Each **agency** shall produce [the] **its exemption notices** for review upon request **by the public or an **agency****, and shall submit a list of **exemption notices** that the **agency** has created since the previous publication submittal deadline to the **office** for publication in the **bulletin** pursuant to subchapter 4.

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



## Subchapter 9 Preparation of Environmental Assessments

### § 11-200.1-18 Preparation and Contents of a Draft Environmental Assessment

- (a) A **proposing agency** shall, or an **approving agency** shall require an **applicant** to [Seek] seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed **action** is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals [which] that the **proposing agency** or **applicant** reasonably believes [to] may be affected.
- (b) The scope of the **draft EA** may vary with the scope of the proposed **action** and its **impact**, taking into consideration whether the **action** is a **project** or a **program**. Data and analyses in a **draft EA** shall be commensurate with the importance of the **impact**, and less important material may be summarized, consolidated, or simply referenced. A **draft EA** shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the **draft EA**, including cost benefit analyses and reports required under other legal authorities.
- (c) The level of detail in a **draft EA** may be more broad for **programs** or components of a **program** for which site-specific impacts are not discernible, and shall be more specific for components of the **program** for which site-specific, **project-level** impacts are discernible. A **draft EA** for a **program** may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the **program** may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.
- (d) A draft **EA** shall contain, but not be limited to, the following information:
- (1) Identification of the **applicant** or **proposing agency**;
  - (2) For **applicant actions**, [Identification] identification of the **approving agency** [-if applicable];
  - (3) List of all **required** permits and **approvals** (State, federal, county) [required] and for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;
  - (4) Identification of **agencies**, citizen groups, and individuals consulted in [making] preparing the **draft [assessment] EA**;
  - (5) General description of the **action's** technical, economic, social, cultural and environmental characteristics;

- (6) Summary description of the affected **environment**, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (7) Identification and [summary] analysis of **impacts** and alternatives considered;
- (8) Proposed mitigation measures;
- (9) **Agency or approving agency** [~~determination or, for draft environmental assessments only an~~] anticipated determination, including findings and reasons supporting the anticipated **FONSI**, if applicable; and
- (10) Written comments and responses to the comments [~~under~~] received and made pursuant to the early consultation provisions of [~~sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15,~~] subsection (a) and statutorily prescribed public review periods.

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

## § 11-200.1-19 Notice of Determination for Draft Environmental Assessments

- (a) After:
  - (1) [~~preparing~~] Preparing, or causing to be prepared, [~~an environmental assessment~~] a **draft EA**; [~~and~~]
  - (2) [~~reviewing~~] Reviewing any public and **agency** comments, [~~if any,~~] and
  - (3) [~~applying~~] Applying the significance criteria in section [~~11-200-12~~] 11-200.1-13[.]; if the **proposing agency** or the **approving agency** anticipates that the proposed **action** is not likely to have a **significant effect**, [~~it~~] the **proposing agency** or **approving agency** shall issue a notice of [~~determination which shall be~~] an anticipated [~~negative declaration~~] **FONSI** subject to the public review provisions of section [~~11-200-9.1~~] 11-200.1-20.
- (b) The **proposing agency** or **approving agency** shall [~~also~~] file [~~such~~] the notice of anticipated determination when applicable and supporting **draft EA** with the **office** as early as possible in accordance with subchapter 4 after the determination is made pursuant to and in accordance with [~~section 11-200-9~~] this subchapter and the requirements in subsection (c) of this section. [~~along with four copies of the supporting environmental assessment. In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency.~~] For **applicant actions**, the **approving agency** shall also send the anticipated **FONSI** to the **applicant**.
- (c) The notice of an anticipated **FONSI** determination shall [~~indicate~~] include in a concise manner:
  - (1) Identification of the [~~applicant or~~] **proposing agency** or **applicant**;
  - (2) Identification of the **approving agency** or **accepting authority**;
  - (3) [~~Brief~~] A brief description of the [~~proposed~~] **action**;

- (4) [Determination] The anticipated FONSI;
- (5) Reasons supporting the anticipated FONSI [determination]; and
- (6) [Name] The name, title email address, physical address, and phone number of [a contact person] an individual representative of the proposing agency or applicant who may be contacted for further information.

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

## § 11-200.1-20 Public Review and Response Requirements for Draft Environmental Assessments ~~[for Anticipated Negative Declaration Determinations & Addenda to Draft Environmental Assessments]~~

- (a) This section shall apply only if a **proposing agency** or an **approving agency** anticipates a ~~[negative declaration]~~ **FONSI** determination for a proposed **action** and ~~[that] the~~ **proposing agency** or the **applicant** proposing the **action** has completed the **draft EA** requirements of ~~[section 11-200-7(a) paragraphs (1), (2), (3), (4), (5), (6) and (7), or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6), as appropriate]~~ sections 11-200.1-18 and 11-200-19.
- (b) ~~[The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental assessment was published in the periodic bulletin and shall continue for a period of thirty days.]~~ Unless mandated otherwise by statute, the period for public review and for submitting written comments shall be thirty days from the date of publication of the draft EA in the bulletin. Written comments ~~[to the proposing agency or approving agency, whichever is applicable, with a copy of the comments to the applicant or proposing agency]~~ shall be received by or postmarked to the **proposing agency** or **approving agency** and **applicant**~~[,]~~ within the thirty-day period. Any comments outside of the thirty-day period need not be ~~[considered or]~~ responded to nor considered in the final EA.
- (c) For **agency actions**, the **proposing agency** shall, and for **applicant actions**, the **applicant** shall: respond in [writing] in the final EA in the manner prescribed in this section to all substantive comments received or postmarked during the [thirty-day] statutorily mandated review period, incorporate comments into the final EA as appropriate[,] and [append] include the comments and responses in the final [environmental assessment] EA. ~~[Each response shall be sent directly to the person commenting, with copies of the response also sent to the office.]~~ [if a number of comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. When grouping comments, the name of each commenter, when known, shall be included along with the



~~grouped response. One representative copy of comments that are identical or very similar may be included in the final EA with a list of the names of each commenter, when known, that submitted the identical comments rather than reproducing each individual comment. All individual comments and representative copies of identical or very similar comments must be included in the final EA regardless of whether the agency or applicant believes the comments merit individual discussion in the body of the final EA.] In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EA, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.~~

~~[(d)] [For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and the approving agency shall incorporate or append the comments and responses in the final environmental assessment. Each response shall be sent directly to the person commenting with a copy to the office. A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.]~~

~~(d) **Proposing agencies and applicants** shall respond in the **final EA** to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:~~

- ~~(1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commentors who raised an issue under a topic heading shall be clearly identified in a distinctly labelled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (e), must be appended in full to the final document; or~~
- ~~(2) By providing a separate and distinct response to each comment clearly identifying the commentor and the comment receiving a response for each comment letter submitted. All comments, except those described in (e), must either be included with the response or appended in full to the final document.~~

~~(e) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:~~

- ~~(1) The response may be grouped under (d)(1) with the response to other comments under the same topic and issue with all commentors identified in the distinctly labelled section identifying commentors by topic; or~~
- ~~(2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the~~

individual commentors who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and

(3) Provided that, if a commentor adds a distinct substantive comment to a form letter or petition, that comment must be responded to pursuant to subsection (d).

(f) In responding to substantive written comments, **proposing agencies** and **applicants** shall endeavor to resolve conflicts, inconsistencies, or concerns identified and to provide a response that is commensurate with the content of those comments. The response shall indicate changes that have been made to the text of the draft **EA**. The response shall describe the disposition of significant environmental issues raised. For example, the response may point to revisions to the proposed **action** to mitigate anticipated **impacts** or objections raised in the comment. In particular, the issues raised when the **proposing agency's** or **applicant's** position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(e) g) An **addendum** document to a **draft** [environmental assessment] **EA** shall reference the original **draft** [environmental assessment] **EA** it attaches to and shall comply with all applicable **filing**, public review and comment requirements set forth in [sections 11-200-3 and 11-200-9] **subchapters 4 and 9**.

[Eff ] (Auth: HRS §§ 343-3, 343-5, 343-6) (Imp: HRS §§ 343-3, 343-5, 343-6)

## §11-200.1-21 Contents of a Final Environmental Assessment

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

- (1) Identification of **applicant** or **proposing agency**;
- (2) Identification of **approving agency**, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in ~~[making]~~ preparing the ~~[assessment]~~ **EA**;
- (4) General description of the **action's** technical, economic, social, cultural and environmental characteristics;
- (5) Summary description of the affected **environment**, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and ~~[summary]~~ analysis of **impacts** and alternatives considered;
- (7) Proposed mitigation measures;

- (8) ~~The [Agency] agency determination and the findings and reasons supporting the determination~~ [or, for draft environmental assessments only, an anticipated determination];
- [(9)] ~~[Findings and reasons supporting the agency determination or anticipated determination;]~~
- [(10)] ~~[Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared];~~
- (9) List of all required permits and **approvals** (State, federal, county) ~~[required]~~ and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review; and
- (10) Written comments and responses to the comments ~~[under]~~ received pursuant to the early consultation provisions [of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15] of subsection 11-200.1-18(a), and statutorily prescribed public review periods in accordance with section 11-200.1-20.

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

## § 11-200.1-22 Notice of Determination for Final Environmental Assessments

- (a) After:
  - (1) ~~[preparing]~~ Preparing, or causing to be prepared, a final [environmental assessment] EA,
  - (2) ~~[reviewing]~~ Reviewing any public and agency comments, [if any,] and
  - (3) ~~[applying]~~ Applying the significance criteria in section [41-200-12] 11-200.1-13, the proposing agency or the approving agency shall issue [one of the following notices] a notice of [determination] a FONSI or EISPN in accordance with [section 11-200-9(a) or 11-200-9(b)] subchapter 9, and file the notice with the office in accordance with subchapter 4. [addressing the requirements in subsection (c), along with four copies of the supporting final environmental assessment, provided that in addition to the above, all notices of determination for any applicant action shall be mailed to the requesting applicant by the approving agency:] For applicant actions, the approving agency shall issue a determination within thirty days of receiving the final EA.
- (b) ~~[Negative declaration]~~ FONSI. If the **proposing agency** or **approving agency** determines that a proposed **action** is not likely to have a **significant effect**, it shall issue a notice of ~~[determination which shall be]~~ a ~~[negative declaration,]~~ FONSI. ~~[and the proposing agency or approving agency shall file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.~~
- (c) ~~[Environmental impact statement preparation notice]~~ EISPN. If the **proposing agency** or **approving agency** determines that a proposed **action** may have a **significant effect**, it

shall issue ~~[a notice of]~~ ~~[determination which shall be]~~ an ~~[environmental impact statement preparation notice]~~ **EISPN** ~~[and such notice shall be filed as early as possible after the determination is made pursuant to and in accordance with section 11-200-9].~~

- (d) The **proposing agency** or **approving agency** shall file in accordance with subchapter 4 the notice and the supporting final **EA** with the **office** as early as possible after the determination is made, addressing the requirements in subsection (e). For **applicant actions**, the **approving agency** shall send the notice of determination for an **EISPN** or **FONSI** to the **applicant**.
- (e) ~~[The **office** shall publish the appropriate notice of determination in the **periodic bulletin** following receipt of the documents in subsection (a) by the **office** in accordance with section 11-200-3.]~~
- (e) The notice of ~~[determination]~~ a **FONSI** shall indicate in a concise manner:
  - (1) Identification of the **applicant** or **proposing agency**;
  - (2) Identification of the **approving agency** or **accepting authority**;
  - (3) ~~[Brief]~~ A brief description of the proposed action;
  - (4) ~~[Determination]~~ The determination;
  - (5) Reasons supporting the determination; and
  - (6) ~~[Name]~~ The name, title, contact information, including the email address, physical address, and phone number of ~~[a contact person]~~ an individual representative of the **proposing agency** or **applicant** who may be contacted for further information.
- (e) The notice of determination for an EISPN shall be prepared pursuant to section 11-200.1-23.
- ~~[(d)] [When an **agency** withdraws a determination pursuant to its rules, the **agency** shall submit to the **office** a written letter informing the **office** of its withdrawal. The **office** shall publish notice of **agency** withdrawals in accordance with section 11-200-3.]~~
- [Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

# Subchapter 10 Preparation of Environmental Impact Statements

## § 11-200.1-23 Consultation Prior to Filing a Draft Environmental Impact Statement

- (a) An **EISPN**, including one resulting from an **agency** authorizing the preparation of an **EIS** without first requiring an **EA**, shall indicate in a concise manner:
- (1) Identification of the **proposing agency** or **applicant**;
  - (2) Identification of the **accepting authority**;
  - (3) List of all required permits and **approvals** (State, federal, county) and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;
  - (3) The determination to prepare an **EIS**;
  - (4) Reasons supporting the determination to prepare an **EIS**;
  - (5) A description of the proposed **action** and its location;
  - (6) A description of the affected **environment** and include regional, location, and site maps;
  - (7) Possible alternatives to the proposed **action**;
  - (8) The **proposing agency's** or **applicant's** proposed scoping process, including when and where the **EIS public scoping meeting** or meetings will be held; and
  - (9) The name, title, contact information, including the email address, physical address, and phone number of an individual representative of the **proposing agency** or **applicant** who may be contacted for further information.
- (b) In the preparation of a draft **EIS**, **proposing agencies** and **applicants** shall consult all appropriate **agencies**, ~~[noted in section 11-200-10(10), and other]~~ including the county agency responsible for implementing the county's general plan for each county in which the proposed **action** is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals [as noted in sections 11-200-9 and 11-200-9.4] that the proposing agency reasonably believes to be affected. To this end, **agencies** and **applicants** shall endeavor to develop a fully acceptable draft **EIS** prior to the time the draft **EIS** is filed with the **office**, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.
- (c) Upon publication of ~~[a preparation notice]~~ an **EISPN** in the **periodic bulletin**, agencies, groups, or individuals shall have a period of thirty days from the initial ~~[issue]~~ publication date ~~[in which to request to become a consulted party and]~~ to make written comments regarding the environmental **effects** of the proposed **action**. ~~[Upon written request by the consulted party and upon good cause shown,]~~ With good cause, the **approving**

**agency or accepting authority** may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the draft EIS pursuant to section 11-200.1-24. For purposes of the scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

- (d) ~~[At the discretion of the proposing agency or an applicant, a]~~ No fewer than one [An] EIS public scoping meeting ~~[to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth]~~ addressing the scope of the draft **EIS** ~~[may]~~ shall be held on the island(s) most affected by the proposed action, within the public review and comment period in subsection ~~[(b)]~~ (c) ~~[, provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d)].~~ The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded.
- ~~[(e)] [Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.]~~
- ~~[(d)] [Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the projects but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement.]~~

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

## § 11-200.1-24 Content Requirements; Draft Environmental Impact Statement

- (a) The draft **EIS**, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all [relevant and feasible] reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the **accepting authority** can make a sound decision based upon the full range of responsible opinion on environmental effects, [a statement] an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.



- (b) ~~[In the developing the EIS preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement.]~~ The scope of the [statement] draft EIS may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a [statement] draft EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. [Statements] A draft EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the [statement] draft EIS, including cost benefit analyses and reports required under other legal authorities.
- (c) The level of detail in a draft EIS may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EIS for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the [planning] project level. Analysis of the program may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.
- (d) The draft EIS shall contain a summary sheet ~~[which]~~ that concisely discusses the following:
- (1) Brief description of the **action**;
  - (2) Significant beneficial and adverse **impacts** (including **cumulative impacts** and **secondary impacts**);
  - (3) Proposed mitigation measures;
  - (4) Alternatives considered;
  - (5) Unresolved issues; ~~and~~
  - (6) Compatibility with land use plans and policies, and listing of permits or **approvals**~~[-]; and~~
  - (7) A list of relevant documents for actions considered in the analysis of the preparation of the EIS.
- (e) The draft EIS shall contain a table of contents.
- (f) The draft EIS shall contain a separate and distinct section that includes ~~[a statement of]~~ the purpose and need for the proposed **action**.
- (g) The draft EIS shall contain a ~~[project]~~ description of the action ~~[which]~~ that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental **impact**:

- (1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a related regional map;
  - (2) ~~[Statement of objectives]~~ Objectives of the proposed action;
  - (3) General description of the **action's** technical, economic, social, cultural, and environmental characteristics;
  - (4) Use of ~~[public]~~ state or county funds or lands for the **action**;
  - (5) Phasing and timing of the action;
  - (6) Summary technical data, diagrams, and other information necessary to ~~[permit]~~ enable an evaluation of potential environmental **impact** by commenting agencies and the public; and
  - (7) Historic perspective.
- (h) The draft **EIS** shall describe in a separate and distinct section reasonable alternatives ~~[which] that~~ could attain the objectives of the **action** ~~[regardless of cost, in sufficient detail to explain why they were rejected]~~. The section shall include a rigorous exploration and objective evaluation of the environmental **impacts** of all such alternative **actions**. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**, costs, and risks of the action. Examples of alternatives include:
- (1) The alternative of no **action**;
  - (2) Alternatives requiring **actions** of a significantly different nature ~~[which] that~~ would provide similar benefits with different environmental **impacts**;
  - (3) Alternatives related to different designs or details of the proposed **actions** ~~[which] that~~ would present different environmental **impacts**;
  - (4) The alternative of postponing **action** pending further study; and,
  - (5) Alternative locations for the proposed ~~[project]~~ action.
- In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed **action** and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail. For any **agency actions**, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the **agency**.
- (i) The draft **EIS** shall include a description of the environmental setting, including a description of the **environment** in the vicinity of the **action**, as it exists before commencement of the **action**, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the **action** site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related **actions**, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall **cumulative impacts** of such **actions**. **Proposing agencies** and **applicants** shall also identify, where appropriate, population and growth characteristics of the affected area, ~~and~~ any population and growth assumptions used to



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

- (j) The draft **EIS** shall include a ~~[statement]~~ **description** of the relationship of the proposed **action** to land use **and natural or cultural resource** plans, policies, and controls for the affected area. Discussion of how the proposed **action** may conform or conflict with objectives and specific terms of approved or proposed land use **and resource** plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the ~~[statement]~~ **draft EIS** shall describe the extent to which the **agency** or **applicant** has reconciled its proposed **action** with the plan, policy, or control, and the reasons why the **agency** or **applicant** has decided to proceed, notwithstanding the absence of full reconciliation.
- (k) The draft **EIS** shall also contain a list of necessary **approvals**, required for the **action**, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified **approval** shall also be described.
- (l) The draft **EIS** shall include ~~[a statement]~~ **an analysis** of the probable **impact** of the proposed **action** on the **environment**, and **impacts** of the natural or human **environment** on the ~~[project]~~ **action**. ~~[, which]~~ **This analysis** shall include consideration of all phases of the **action** and consideration of all consequences on the **environment** ~~[,]~~, **including direct and indirect effects** ~~[shall be included]~~. The interrelationships and cumulative environmental **impacts** of the proposed **action** and other related ~~[projects]~~ **actions** shall be discussed in the draft **EIS**. ~~[It should be realized]~~ **The draft EIS should recognize** that several **actions**, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource ~~[projects]~~ **actions**, etc.) may well stimulate or induce **secondary effects**. These **secondary effects** may be equally important as, or more important than, **primary effects**, and shall be thoroughly discussed to fully describe the probable **impact** of the proposed **action** on the **environment**. The population and growth **impacts** of an **action** shall be estimated if expected to be significant, and an evaluation **shall be** made of the **effects** of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed **action** constitutes a direct or indirect source of pollution as determined by any governmental **agency**, necessary data **regarding these impacts** shall be incorporated into the **EIS**. The significance of the **impacts** shall be discussed in terms of **subsections** ~~[(j), (k), (l), and (m)]~~ **(m), (n), (o), and (p)**.
- (m) The draft **EIS** shall include in a separate and distinct section a description of **the** relationship between local short-term uses of humanity's **environment** and the maintenance and enhancement of long-term productivity. The extent to which the proposed **action** involves trade-offs among short-term and long-term gains and losses

shall be discussed. The discussion shall include the extent to which the proposed **action** forecloses future options, narrows the range of beneficial uses of the **environment**, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed **action**.

- (n) The draft **EIS** shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed **action** should it be implemented. Identification of unavoidable **impacts** and the extent to which the **action** makes use of non-renewable resources during the phases of the **action**, or irreversibly curtails the range of potential uses of the **environment** shall also be included. The possibility of environmental accidents resulting from any phase of the **action** shall also be considered. [~~Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.~~]
- (o) The draft **EIS** shall address all probable adverse environmental **effects** ~~[which]~~ that cannot be avoided. Any adverse **effects** such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy ~~[such as that]~~ including those found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), [342N,] 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, [shall be included, including] and those **effects** discussed in other [actions] subsections of this [paragraph] section [which] that are adverse and unavoidable under the proposed **action** must be addressed in the draft **EIS**. Also, the rationale for proceeding with a proposed **action**, notwithstanding unavoidable **effects**, shall be clearly set forth in this section. The draft **EIS** shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental **effects** of the proposed **action**. The draft [statement] **EIS** shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed **action** that would avoid some or all of the adverse environmental **effects**.
- (p) The draft **EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce ~~[impact]~~ impacts, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the **action** plan to reduce significant, unavoidable, adverse **impacts** to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a

particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. ~~[Included]~~ The draft EIS shall include, where possible ~~[and appropriate]~~, ~~[should be]~~ specific reference to the timing of each step proposed to be taken in ~~[the]~~ 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.

- (q) The draft **EIS** shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the **action**, or what overriding reasons there are for proceeding without resolving the ~~[problems]~~ issues.
- (r) The draft **EIS** shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the **statement**, and shall disclose the identity of the **persons**, firms, or **agency** preparing the **statement**, by contract or other authorization~~[, shall be disclosed]~~.
- (s) The draft **EIS** shall include a separate and distinct section that contains:
- (1) ~~[reproductions]~~ Reproductions of all ~~[substantive]~~ written comments ~~[and responses made]~~ submitted during the ~~[consultation process]~~ consultation period required in section 11-200.1-23;
  - (2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. **Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:**
    - (A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commentor under that topic heading by issue. When grouping comments by topic and issue, the names of commentors who raised an issue under a topic heading shall be clearly identified in a distinctly labelled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commentor identified in each applicable topic area. All comments, except those described in subsection (3), must be appended in full to the final document; or
    - (B) By providing a separate and distinct response to each comment clearly identifying the commentor and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in (3), must either be included with the response, or appended in full to the final document;

- (3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
    - (A) The response may be grouped under (2)(A) with the response to other comments under the same topic and issue with all commentors identified in the distinctly labelled section identifying commentors by topic; or
    - (B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commentors who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and
    - (C) Provided that, if a commentor adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (2);
  - (4) A summary of **any EIS public scoping meetings**, including a written general summary of the oral comments made, and a representative sample of any handout related to the **action** provided at the **EIS public scoping meeting(s)**;
  - (5) A list of those **persons** or **agencies** who were consulted and had no comment [shall be included in the draft **EIS**] in a manner indicating that no comment was provided; and
  - (6) A representative sample of the **agency** consultation request letter.
- (t) An **addendum** [document] to a draft environmental impact statement **EIS** shall reference the original draft [environmental impact statement] **EIS** to which it attaches [to] and comply with all applicable filing, public review, and comment requirements set forth in subchapter [7] 10.
- [Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-5, 343-6)

## § 11-200.1-25 Public Review Requirements for Draft Environmental Impact Statements

- (a) Public review shall not substitute for early and open discussion with interested **persons** and **agencies** concerning the environmental **impacts** of a proposed **action**. Review of the **draft EIS**, shall serve to provide the public and other agencies an opportunity to discover the extent to which a **proposing agency** or **applicant** has examined environmental concerns and available alternatives.
- (b) The period for public review and for submitting written comments shall commence ~~as of~~ from the date that notice of availability of the draft **EIS** is initially issued in the **periodic bulletin** and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments to the ~~approving agency or~~ accepting authority, ~~whichever is applicable,~~ with a copy of the comments to the ~~applicant or~~ proposing agency or applicant, shall be received by or postmarked to the **approving agency** or **accepting authority**, within ~~said~~ the forty-five-day comment period. Any comments outside of the forty-five day comment period need not be ~~considered or~~ responded to nor considered.

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

## § 11-200.1-26 Comment Response Requirements for Draft Environmental Impact Statements

- (a) In accordance with the content requirements of section 11-200.1-27, [The] the **proposing agency** or **applicant** shall respond [in writing] within the **final EIS** to [the] all **substantive written comments** received by or postmarked to the approving agency during the forty-five-day review period. [and incorporate the comments and responses in the final EIS]. [The response to comments shall include:] In deciding whether a written comment is substantive, the **proposing agency** or **applicant** shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the **proposing agency** or **applicant** as non-substantive and to which no response was provided shall be clearly indicated.
- (b) **Proposing agencies** and **applicants** shall respond in the final EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:
- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commentor under that topic heading by issue. When grouping comments by topic and issue, the names of commentors who raised an issue under a topic heading shall be clearly identified in a distinctly labelled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed



- throughout the applicable topic areas with the commentor identified in each applicable topic area. All comments, except those described in subsection (c), must be appended in full to the final document; or
- (2) By providing a separate and distinct response to each comment clearly identifying the commentor and the comment receiving a response for each comment letter submitted. All comments, except those described in (c), must either be included with the response or appended in full to the final document.
- (c) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
- (1) The response may be grouped under (b)(i) with the response to other comments under the same topic and issue with all commentors identified in the distinctly labelled section identifying commentors by topic; or
- (2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commentors who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and
- (3) Provided that if a commentor adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (d).
- (d) In responding to substantive written comments, **proposing agencies** and **applicants** [Responses] shall endeavor to resolve conflicts, inconsistencies, or concerns identified and to provide a response that is commensurate with the content of those comments. ~~[Response letters reproduced in the text of the final EIS]~~ The response shall indicate [verbatim] changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised. [(e.g.,] For example, the response may point to revisions to the proposed [project] **action** to mitigate anticipated **impacts** or objections raised in the comment[, etc.]). In particular, the issues raised when the ~~[applicant's or]~~ **proposing agency's** or applicant's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

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



## § 11-200.1-27 Content Requirements; Final Environmental Impact Statement

- (a) The final **EIS**, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed **action** and shall discuss all ~~[relevant and feasible]~~ reasonably foreseeable consequences of the **action**. In order that the public can be fully informed and that the **accepting authority** can make a sound decision based upon the full range of responsible opinion on environmental effects, ~~[a statement]~~ an **EIS** shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.
- (b) The final **EIS** shall consist of:
- (1) The draft **EIS** prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the ~~[consultation and]~~ review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;
  - ~~[(2)]~~ ~~[Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;]~~
  - ~~[(3)]~~ (2) A list of **persons**, organizations, and public **agencies** commenting on the draft **EIS**;
  - (3) A list of those **persons** or **agencies** who were consulted with in preparing the final **EIS** and had no comment shall be included in a manner indicating that no comment was provided;
  - (4) ~~[The responses of the applicant or **proposing agency** to each substantive question, comment, or recommendation received in the review and consultation processes;]~~ A written general summary of oral comments made at any public meetings; and
  - (5) The text of the final **EIS** ~~[which shall be]~~ written in a format ~~[which]~~ that allows the reader to easily distinguish changes made to the text of the draft **EIS**.

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

## § 11-200.1-28 Acceptability

- (a) Acceptability of ~~[a statement]~~ a final EIS shall be evaluated on the basis of whether the ~~[statement]~~ final EIS, in its completed form, represents an informational instrument ~~[which]~~ that fulfills the ~~[definition of an EIS]~~ intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental **impacts** and satisfactorily responds to review comments.
- (b) A ~~[statement]~~ final EIS shall be deemed to be an acceptable document by the **accepting authority** or **approving agency** only if all of the following criteria are satisfied:
- (1) The procedures for assessment, consultation process, review, and the preparation and submission of the ~~[statement]~~ EIS, from proposal of the action to publication of the final EIS, have all been completed satisfactorily as specified in this chapter;
  - (2) The content requirements described in this chapter have been satisfied; and
  - (3) Comments submitted during the review process have received responses satisfactory to the **accepting authority**, or **approving agency**, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated ~~[in]~~ into the ~~[statement]~~ final EIS.
- (c) For **actions** proposed by **agencies**, the **proposing agency** may request the **office** to make a recommendation regarding the acceptability or non-acceptability of the **EIS**. If the office decides to make a recommendation, it shall submit the recommendation to the accepting authority and proposing agency. In all cases involving state funds or lands, the governor or ~~[an]~~ the governor's authorized representative shall have final authority to accept the **EIS**. In cases involving only county funds or lands, the mayor of the respective county or ~~[an]~~ the mayor's authorized representative shall have final authority to accept the **EIS**. The **accepting authority** shall take prompt measures to determine the acceptability or non-acceptability of the **proposing agency's** ~~[statement]~~ EIS. In the event that the **action** involves ~~[both]~~ state and county lands ~~[or]~~ state or county funds, or both state and county lands and state and county funds, the governor or ~~[an]~~ the governor's authorized representative shall have final authority to accept the **EIS**.
- (d) Upon **acceptance** or non-acceptance of the **EIS**, a notice shall be filed by the appropriate **accepting authority** with both the **proposing agency** and the **office**. For any non-accepted **EIS**, the notice shall contain specific findings and reasons for non-acceptance. The **office** shall publish notice of the determination of **acceptance** or non-acceptance in the **periodic bulletin** in accordance with ~~[section 11-200-3]~~ subchapter 4. **Acceptance** of a required **statement** shall be a condition precedent to the use of state or county lands or funds in implementing the proposed **action**.
- (e) For **actions** proposed by **applicants** requiring **approval** from an **agency**, the **applicant** or **accepting authority**, which is the approving agency, may request the **office** to make a recommendation regarding the acceptability or non-acceptability of the ~~[statement]~~ EIS.

If the **office** decides to make a recommendation, it shall submit the recommendation to the **applicant** and the **approving agency** within the ~~[thirty-day]~~ period requiring an **approving agency** to determine the acceptability of the final **EIS** ~~[and described in section 343-5(c), HRS]~~. Upon **acceptance** or non-acceptance by the **approving agency**, the **agency** shall notify the **applicant** of its determination, and provide specific findings and reasons. The **agency** shall also provide a copy of this determination to the **office** for publication ~~[of a notice]~~ in the **periodic bulletin**. **Acceptance** of the required **EIS** shall be a condition precedent to **approval** of the request and commencement of the proposed **action**. ~~[An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's statement.]~~ The **agency** shall notify the **applicant** and the **office** of the **acceptance** or non-acceptance of the final **EIS** within thirty days of the final **EIS submission to the agency** ~~[;]~~; provided that the thirty-day period may, at the request of the applicant, be extended ~~[at the request of the applicant]~~ for a period not to exceed fifteen days. The request shall be made to the **accepting authority** in writing. Upon receipt of an **applicant's written** request for an extension of the thirty-day **acceptance** period, the **accepting authority** shall notify the **office** and **applicant** in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the **applicant's** request. An extension of the thirty-day **acceptance** period shall not be ~~[allowed]~~ granted merely for the convenience of the **accepting authority**. In the event that the **agency** fails to make a determination of **acceptance** or non-acceptance ~~[for]~~ of the [statement] EIS within thirty days of the receipt of the final **EIS**, then the **statement** shall be deemed accepted.

- (f) A non-accepted **EIS** may be revised by a **proposing agency** or **applicant**. The revision shall take the form of a revised draft **EIS** ~~[document]~~ which shall fully address the inadequacies of the non-accepted **EIS** and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, **acceptance** or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by ~~[sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23]~~ subchapters 4 and 10 for an **EIS** submitted for **acceptance**. In addition, the ~~[revised draft EIS]~~ subsequent revised final EIS shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.
- (g) A **proposing agency** or **applicant** may withdraw an **EIS** by simultaneously sending a ~~[letter]~~ written notification to the **office** and to the accepting authority informing the **office** of the proposing agency's or applicant's withdrawal. Subsequent resubmittal of the **EIS** shall meet all requirements for filing, distribution, publication, review, **acceptance**, and notification as a ~~[new]~~ draft EIS.

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

## § 11-200.1-29 Appeals to the Council

An **applicant**, within sixty days after a non-acceptance determination by the approving agency under section 11-200.1-28 of [a statement] a final EIS [by an agency], may appeal the non-acceptance to the **council**, which within thirty days of receipt of the appeal, shall notify the **applicant** appealing of its determination to affirm the approving agency's non-acceptance or to reverse it. The council chairperson shall include the appeal on the agenda of the next council meeting following receipt of the appeal. In any affirmation or reversal of an appealed non-acceptance, the **council** shall provide the **applicant** and the **agency** with specific findings and reasons for its determination. The **agency** shall abide by the **council's** decision.

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

## § 11-200.1-30 Supplemental Environmental Impact Statements

- (a) [A statement] An EIS that is accepted with respect to a particular **action** is usually qualified by the size, scope, location, intensity, use, and timing of the **action**, among other things. [A statement] An EIS that is accepted with respect to a particular **action** shall satisfy the requirements of this chapter and no [either] supplemental [statement] EIS for that proposed **action** shall be required, to the extent that the **action** has not changed substantively in size, scope, intensity, use, location or timing, among other things. If there is any change in any of these characteristics which may have a **significant effect**, the original **statement** that was changed shall no longer be valid because an essentially different **action** would be under consideration and a **supplemental [statement] EIS** shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed **action** resulting in individual or **cumulative impacts** not originally disclosed, the [statement] EIS associated with that **action** shall be deemed to comply with this chapter.
- (b) The **accepting authority** or **approving agency** in coordination with the original **accepting authority** shall be responsible for determining whether a **supplemental [statement] EIS** is required. This determination will be submitted to the **office** for publication in the **periodic bulletin**. **Proposing agencies** or **applicants** shall prepare for public review **supplemental [statements] EISs** whenever the proposed **action** for which [a] an [statement] EIS was accepted has been modified to the extent that new or different environmental **impacts** are anticipated. A **supplemental [statement] EIS** shall be warranted when the scope of an **action** has been substantially increased, when the intensity of environmental **impacts** will be increased, when the mitigating measures originally planned [are] will not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental **impacts** not previously dealt with.
- (c) The contents of the **supplemental [statement] EIS** shall be the same as required by this chapter for the **EIS** and may incorporate by reference unchanged material from the same;

however, in addition, it shall fully document the proposed changes from the original **EIS**, including changes in ambient conditions or available information that have a bearing on a proposed **action** or its **impacts**, the positive and negative aspects of these changes, and shall comply with the content requirements of ~~[section 11-200-16]~~ subchapter 10 as they relate to the changes.

- (d) The requirements of the thirty-day consultation, ~~[filing]~~ public notice filing, distribution, the forty-five-day public review, comments and response, and **acceptance** procedures, shall be the same for the **supplemental** ~~[statement]~~ **EIS** as is prescribed by this chapter for an **EIS**.

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

Draft

## Subchapter 11 National Environmental Policy Act

### § 11-200.1-31 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS

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

- (1) The **applicant** or **agency**, upon discovery of its proposed **action** being subject to both chapter 343, HRS, and the ~~[National Environmental Policy Act]~~ **NEPA**, shall notify the responsible federal ~~[agency]~~ **entity**, the **office**, and any **agency** with a definite interest in the **action** (as prescribed by chapter 343, HRS) ~~[of the situation]~~.
- (2) When a federal entity determines that the proposed **action** is exempt 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.
- (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 with this chapter. In such cases, state and county agencies remain responsible for compliance with this chapter. However, the federal **FONSI** may be considered in the state or county **agency** determination.
- (4) The ~~[National Environmental Policy Act]~~ **NEPA** requires that ~~[draft statements]~~ **EISs** be prepared by the responsible federal ~~[agency]~~ **entity**. In the case of **actions** for which an **EIS** pursuant to the **NEPA** has been prepared by the responsible federal entity, the draft and final federal **EIS** may be submitted to comply with this chapter, so long as the federal **EIS** satisfies the **EIS** content requirements of this chapter and is not found to be inadequate under the **NEPA**: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the **NEPA** regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857.
- (5) When the responsibility of preparing an **EIS** is delegated to a state or county **agency**, this chapter shall apply in addition to federal requirements under the ~~[National Environmental Policy Act]~~ **NEPA**. The **office** and state or county



**agencies** shall cooperate with federal [~~agencies~~] entities to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint [~~environmental impact statements~~] EISs with concurrent public review and processing at both levels of government. Where federal law has [~~environmental impact statement~~] EIS requirements in addition to but not in conflict with this chapter, the **office** and **agencies** shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.

- (6) Where the NEPA process requires earlier or more stringent public review, [and processing] filing, and distribution than under this chapter, then that NEPA process shall satisfy this chapter so that duplicative consultation or review do not occur. The responsible federal entity's supplemental EIS requirements shall apply in these cases in place of this chapter's supplemental EIS requirements.
- (7) In all **actions** where the use of state land or funds is proposed, the final [~~statement~~] EIS shall be submitted to the governor or an authorized representative. In all **actions** when the use of county land or funds is proposed and no use of state land or funds is proposed, the final [~~statement~~] EIS shall be submitted to the mayor, or an authorized representative. The final [~~statement~~] EIS in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the [~~Environmental Protection Agency or~~] responsible federal [~~agency~~] entity.
- (8) Any **acceptance** obtained pursuant to [~~paragraphs (1) to (3)~~] this section shall satisfy chapter 343, HRS, and no other [~~statement~~] EIS for the proposed **action** shall be required.

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

## Subchapter 12 Retroactivity and Severability

### § 11-200.1-32 Retroactivity

- (a) The rules shall apply immediately upon taking effect, except as otherwise provided below.
- (b) Hawaii Administrative Rules (HAR) chapter 11-200 shall continue to apply to environmental review of **agency** and **applicant actions** which began prior to the adoption of HAR chapter 11-200.1, provided that:
- (1) For **EAs**, if the **draft EA** was published by the **office** prior to the adoption of HAR chapter 11-200.1 and has not received a determination within a period of five years from the implementation of HAR chapter 11-200.1, then the **proposing agency** or **applicant** must comply with the requirements of HAR chapter 11-200.1. All subsequent environmental review, including an **EISPN** must comply with HAR chapter 11-200.1.
  - (2) For **EISs**, if the **EISPN** was published by the **office** prior to the adoption of HAR chapter 11-200.1 and the final **EIS** has not been accepted within five years from the implementation of HAR chapter 11-200.1, then the **proposing agency** or **applicant** must comply with the requirements of HAR chapter 11-200.1.
  - (3) A judicial proceeding regarding the proposed **action** shall not count towards the five-year time period.
- (c) Exemption lists that have received concurrence under HAR chapter 11-200 may be used for a period of seven years after the adoption of HAR chapter 11-200.1, during which time the agency must revise its list and obtain concurrence from the council in conformance with HAR chapter 11-200.1.

[Eff ] (Auth: HRS § 343-6) (Imp: HRS § 343-6)

### § 11-200.1-33 Severability

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

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

## Note

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

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

This note will be updated pending adoption of the Proposed Rules.