

**State of Hawai‘i Environmental Council Response to Comments on the  
Proposed Repeal of Hawai‘i Administrative Rules (HAR) Title 11, Chapter 200 and  
Adoption of HAR Title 11, Chapter 200.1**

Version 2.0

The Environmental Council (Council) has proposed to repeal HAR Title 11, Chapter 200 and adopt HAR Title 11, Chapter 200.1 (the "Final Proposed Rules" or "Version 2.0"). The last time that the rules were updated was in 1996. The main purposes of the proposed repeal and adoption of these rules are to update them in line with statutory amendments to Chapter 343, Hawai‘i Revised Statutes (HRS), case law, and modern practice, as well as to address inconsistencies in previous language. The Council has prepared this document in response to written and oral comments received by the Council during the public comment period and the public hearings held on the Draft Proposed Rules. The Council adopted this document as amended as its official response to comments at its December 18, 2018 meeting.

Details of the Council's consultation efforts on the Final Proposed Rules, including informal consultation as well as formal public hearings, can be found in the Version 2.0 Rules Rationale available on the Office of Environmental Quality Control (OEQC) website here:

<http://health.hawaii.gov/oeqc/rules-update/>.

The Council wishes to thank every person and organization who has taken the time to participate in this rules effort and that have provided comments on the proposed rules. Over the course of almost three years, many stakeholders came to meetings, met with Council members, and provided comments. During the formal public hearings comment period, the Council received 36 written letters and 29 oral comments from 28 speakers across the State, including comments from agencies, individuals, and organizations. The following matrix sets forth the written and oral comments received during the formal comment period as well as the Council's responses to the comments.

The Council's response to comments should be read in conjunction with the PDF of public comments, titled "Written and Oral Comments on Draft 1.0, HAR 11-200.1", dated October 2, 2018, available at the OEQC website. Pages 1 through 180 of that PDF are the written comments received by the Council during the 30-day public comment period. Pages 181 through 250 are the transcripts from the 9 public hearings on the proposed rules.

The matrix is set up in the order of commenters as they appear in the PDF of public comments. There are five columns (from left to right): (1) commenter's name and organization (if given); (2) general topic of the comment; (3) summary of comment; (4) HAR section affected by the comment; and (5) Council response to the comment.

Being mindful of the length and size of the response to comments document, Column 3 reflects summaries of the comments made by commenters rather than repeating the comments verbatim. The Council therefore recommends that the response to comments be read with the PDF of public comments. The Council's response to each comment in Column 5 is based on the comments as they appear in the PDF of public comments -- not the summary of comment in Column 3.

While the response to comments matrix does not reproduce each instance where language has been changed, the response notes whether or not a change was made and to what section based on the particular comment. Commenters can view the edits made in the official Version 2.0 and Version 2.0 Unofficial Ramseyer versions, which can be found at the OEQC website. Additional information for the edits made to the Final Proposed Rules can be found in the Council's meeting minutes for November 13, November 27, and December 18, 2018 meeting as well as the Version 2.0 Rules Rationale.

The Council appreciates the time and effort of all those involved.

Name	General Topic	Specific Comment	Rules Section	Response
John Kirkpatrick	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio	Public meetings are boisterous; unclear evidentiary status of the recordings. Does OEQC plan to review these recordings as part of the process of reviewing a draft, and will OEQC's submittal acceptance process include a decision that the recordings are adequate for the EIS process?	§ 11-200.1-5(e)(5)(E)	The current rules require that all oral comments received at a meeting be treated the same as written comments; i.e., presumably transcribed and responded to. The rules propose recordings only for the portion of the public scoping meeting designated for receiving oral comments. The entire scoping meeting does not have to be recorded. This is consistent with requirements for other meetings.
	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio	Can OEQC complete their review in a timely manner? Scoping meetings may generate so much audio. Can the adequacy of recordings be challenged in court?	§ 11-200.1-5(e)(5)(E)	Agencies and applicants are required to ensure that recordings are made of sufficient quality so that comments are audible. OEQC will review the audio recordings when submitted as it does for any submittal to be published in the bulletin, but the OEQC is not authorized to be a decision-maker on the adequacy of an EIS. If parties suspect the recordings are inadequate, they may take appropriate legal action, as they would for any EIS inadequacy. It is to be understood that not every comment a person makes may be audible or intelligible. The applicant or agency must simply record speakers at the public comment section.
	Acceptability; Comment Response Requirements for EAs and EISs	If a commenter finds that his or her comment was not adequately summarized by the agency or applicant in the draft EIS, does that affect the acceptability of the EIS process?	§§ 11-200.1-8, -20, -26	Whether or not an inadequate summary of a comment at the public scoping meeting will affect the acceptability of an EIS will need to be evaluated on a case-by-case basis. The point of a scoping meeting is to assist the agency or applicant in determining the scope of the EIS. Therefore, any determination about the adequacy or acceptability of a final EIS based on comments made during scoping should be limited to scoping of the EIS.
	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio of Public Comment Section of Meeting	Will the audio recordings kept by OEQC become part of the public record accessible for review (a) during the draft EIS comment period and (b) afterward?	§ 11-200.1-5(e)(5)(E)	The recordings will become part of the record for the project. They will be available as audio files on the website hosted by OEQC, much like EAs and EISs are currently. These files can be listened to on an iPhone, PC or tablet, or at computer at a public library, among other locations. The comment summary section is general, rather than specific, and it is not intended in any way to be a transcription. If a commenter wants to ensure their comment appears exactly as they expressed it, it must be a written comment, not an oral comment.
	Comment Response Requirements for EAs and EISs	It appears that the agency or applicant is not required to provide responses to summarized oral comments.	§§ 11-200.1-5(e)(5)(E); 11-200.1-8, -20, -26	That is correct, there is no requirement to respond to oral comments.
Shannon Alivado, General Contractors Association of Hawaii	Definitions; Disclosure of Impacts	The language amending the definition of "environmental assessment", previously defined as a "written evaluation to determine whether an action may have a significant environmental effect" to a written evaluation "that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect." This definition broadens the requirements of an EA. The change in wording implies a legal standard, and requires interpretation to determine what is meant. The GCA requests that the definition of environmental assessment remain the same, or if a change is necessary, that the change narrow the definition to ensure the applicant understands what is expected.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	Definitions; Analysis	Is it necessary to use the word "analysis" and is the use of such word exceeding the original intent of the content of an EA and EIS was meant to include? The new proposed language would require draft and final EAs and EISs to include an analysis of impacts and alternatives considered instead of an identification and summary of those impacts and alternatives. "Analysis" is very subjective. Suggests deleting the reference to "summary analysis" and allow applicant to "identify" any impacts to the environment.	§ 11-200.1-2	The Council believes that the new language does not impose any greater requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language makes this explicit and clearer.

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Fox Mark, The Nature Conservancy	General; General Types of Actions Eligible for Exemption	A statement of appreciation to the Council for thorough approach and opportunity for stakeholders to participate throughout the process. Especially grateful for work done to clarify significance criteria in Subchapter 7 and exemption provisions in Subchapter 8, helping to distinguish actions that benefit the environment.	§§ 11-200.1-13(b), 11-200-1.15, -16, -17	Comment acknowledged.
Ivan Hou, Local 5	General; Standards of Review	EIS rules should provide different guidance and compliance requirements between agency-applicants doing public works or small scale/residential projects vs. large for-profit commercial projects.	General	HRS Chapter 343 does not give the Council authority to impose different standards and/or requirements based on the type of project proposed. Chapter 343 and the HAR must be applied equivalently if they are triggered.
	Language	Some of the draft language injects subjectivity into the process. Objective and quantifiable mechanisms should be used to ensure robust review, avoid ambiguity, and discourage misapplication of discretionary power.	General	Comment acknowledged. The Council has endeavored to achieve all of the goals listed by the commenter.
	Supplemental EIS; "Shelf Life"	<p>Suggests that the language in Version 0.2 HAR 11-200-27 the five year timeline regulating when a prior decision/EIS can be used to determine whether a newer supplemental EIS is required), should be re-introduced and included in the new rule. The language was removed after a few public comments raised concerns.</p> <p>Thinks the five year shelf life is objective and quantifiable. The Version 0.2 language was reasonable. Without an objective measure the rule invites dispute over subjective interpretations, especially for controversial projects.</p> <p>The current proposed rule HAR 11-200.1-30 is unclear on whether there is any mechanism or trigger that would bring regulatory attention to the fact an applicant is commencing work on a project that was more than five years old, unless the applicant voluntarily discloses that changes to its approved project may be "substantive". Too much discretion is given to an applicant to decide what is "substantive".</p>	§ 11-200.1-30	When the Council introduced the NEPA concept of a 5-year re-evaluation period for EISs, stakeholders for and against the proposal read that as an automatic "shelf life" of the EIS where a supplemental EIS would automatically be required after 5 years. The Council did not propose an automatic shelf life of any period because the Chapter 343, HRS, process is based on impacts not arbitrary time limits, so the Council withdrew the re-evaluation concept from subsequent revisions in order to refine it. While doing so, members of the public recommended the Council integrate the City and County of Honolulu Department of Planning and Permitting (DPP) practice of the "Green Sheet", which is DPP's way to track Chapter 343, HRS, compliance for actions moving through DPP's permitting process. The Green Sheet allows all factors, including a change in the project or anticipated impacts, leaning toward or against additional review, to be considered and tracked through a formal, internal process. The Council deferred making edits to the supplemental EIS sections but did introduce section 11 as a means to promote good practice such as DPP's Green Sheet.
	Use of Prior Exemptions, FONSI, or Accepted EIS	<p>Allowing an agency to use a prior exemption, FONSI or accepted EIS to exempt a proposed action from a new HRS 343 review if that action was included as an alternative in a prior Final EA or accepted EIS and met other criteria is problematic, as a study is not a substitute for a complete environmental review.</p> <p>Concerned that the language as written invites a non-agency applicant's proposed action to be exempt if it is found to have "similar" effect as the prior determination or study. This invites bait and switch behavior where less scrutinized alternative actions can become the de-facto proposed action.</p> <p>Recommends that the exemption allowance is removed altogether, or limit the proposed HAR 11-200.1-11 exemption to agency-applicants engaged in public works and applicants proposing small scale residential or commercial projects. Non-agency applicants engaged in large for-profit developments should explicitly not be eligible for a proposed action to be exempt simply because it was once included in the "alternatives" section of a prior study.</p>	§ 11-200.1-11	The intent of the added language is not to allow the use of prior documents that do not fully analyze an alternative. If the prior document (exemption, FONSI, EA or EIS) does not meet the requirements of Chapter 343, HRS, and the Final Proposed Rules or does not otherwise provide the required analysis, that is taken into account when the agency determines whether or not the prior analysis may be used. If the prior analysis is not sufficient, further review may be needed. This new language allows for the flexibility for an agency to make that determination, instead of simply requiring a new document be prepared when an existing document could be sufficient.

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	Definitions; Program vs. Project	The proposed rule is permissive in allowing “conceptual” analysis when future effects or site-specific impact in a long-term program is “indiscernible”. The rule could open the door for applicants to commence with actions that are not properly studied beyond a vague summarization in their initial EA/EIS. For example, if an applicant submitted a Programmatic EIS that contained vague analysis because effects were “indiscernible” at the time, could that applicant later be granted exemption for further EIS review (e.g. as allowed by HAR 11-200.1-30 for supplemental reviews) by claiming new proposed actions were already accepted within that prior vague EIS analysis? Suggests the proposed rules explicitly restrict the use of incomplete or conceptual analysis contained in prior EA/EIS if an applicant is relying on them for exemption for new actions that would themselves otherwise require a new EA/EIS.	§ 11-200.1-13	The Council amended the Final Proposed Rules to remove "conceptual" analysis for programs undergoing EAs and EISs. Also, the Green Sheet mechanism is intended to reduce the potential for the issues raised. If a program EIS does not sufficiently analyze impacts, a project conceptualized under a program might be required to do a site-specific EA, EIS, or other level of review as necessary.
	Significance Criteria; Sea Level Rise	Hawai'i is dependent on sandy beaches and tourism, and is greatly affected by the growing side effects of climate change. This rulemaking process is a timely opportunity to address sea level rise through early, thoughtful and strategic development planning. However, rule Version 1.0 mentions sea level rise only once (other rules and statutes notwithstanding). The state should take advantage of this chance to make sea level rise a point of emphasis in an environmental review. Recommends that wherever the rule describes EA/EIS content requirements, a new section is added to specifically address sea level rise and shoreline developments. Commenter provided a series of questions on sea level rise, impacts to sea level rise, and how impacts will be addressed.	§ 11-200.1-13	Numerous resources areas may be critically important to analyze in an EA or EIS, depending on the proposal and location; to name but a few, cultural impacts, endangered species, water quality, and traffic. The Council received comments from various parties who wished to emphasize these subjects in the rules through repetition whenever impacts were discussed. The Council has chosen not to favor analysis of any particular impact, as all are potentially important and could be significant. The Council believes the Office should issue guidance on various impact analyses in preference to rulemaking on this. Moreover, sea level rise is only one aspect of climate change and potentially not the worst that Hawaii is facing. For sea level rise, the preferred mechanism is for the Hawaii Climate Change Mitigation and Adaptation Commission and the agencies who are tasked with regulating sea level rise to make such rules and/or guidelines, including the OEQC issuing guidance per recommendation of the Commission's report. The OEQC can refer to those agencies' guidance in the Office's own guidance. Rulemaking that may conflict with the aforementioned agencies' rules and jurisdiction is something to be cautious of. That noted, the Council did adopt into the Final Proposed Rule the recommendation of the Department of Land and Natural Resources to include the state sea level rise exposure area as an example of a map to be included in draft and final EAs and EISs.
	Consultation Prior to Filing a Draft EIS; Consulted Party	Version 1.0 removes language that allows interested parties to become a “consulted” party on the rationale that all documents and data are now available online. However, one feature of being listed as a “consulted” party was the ability to request copies of documents be sent to the consulted party. This lost feature puts an onerous responsibility on the public to check public notice for new documents and risk missing deadlines if they happen to miss a release. The EIS rule should include a requirement that allows interested parties to join a mailing list or email list to be promptly notified of new submittals related to a proposed action.	§ 11-200.1-23	The Council believes it is not onerous to monitor <i>The Environmental Notice</i> for publications, as it is the official publication record of actions undergoing environmental review. Individuals may sign up for the OEQC's mailing list and twice a month check the table of contents of the bulletin for actions they may be concerned about. The OEQC can also develop guidance on notifying commenters.
	General Types of Actions Eligible for Exemption; Exemption Lists; Highway Signage	Version 1.0 allows exemptions and exemption lists for agencies to streamline their ordinary duties, including the “installation of routine signs and markers” (HAR 1-200.1-16). Excessive number of road signs on Hawaii’s roads degrade the aesthetic quality of the state’s natural environment (for example, the numerous “No Parking” and traffic signs along the scenic Ka Iwi Coast road on the east side of Oahu). Suggests benefit of having an EIS mechanism to provide a check on the number of road signs and their impact on view planes.	§§ 11-200.1-15, -16	The Final Proposed Rules call for agencies to obtain concurrence with the Council concerning exemption lists, which involves a public disclosure process consisting of several steps. In sensitive areas, Type 1 exemptions for signage may not be appropriate and can be identified as such during public and Council review of the exemption list. Type 2 exemptions will require publication in <i>The Environmental Notice</i> , which enables public review. Should a signage project trigger review under Chapter 343, HRS, the cumulative impact of such a project would need to be considered and a determination made whether it involves an exemption, EA, or EIS.

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Blaine Miyasato, Airlines Committee of Hawaii	Purpose	Reword: "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." [too aspirational and hard to fulfill] "Make efforts to 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."	§ 11-200-1.1 (c) (3)	The Council considered these comments and reworded the section in accordance with your suggestion.
	Definitions; EA	Replace the word "evidence" with "facts" in the new definition of EA as a written evaluation "that serves to provide sufficient evidence and analysis"	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: 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, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an "analysis" of impacts and alternatives considered instead of an "identification and summary" of those impacts and alternatives. An "analysis" requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	The Council believes that the new language does not impose any greater requirements than what is requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language makes this explicit and clearer.
	Content Requirements; Draft EIS	"Reasonably foreseeable" consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: "the reasonably foreseeable environmental consequences"	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent.
Debra Norenburg	Exemption Lists	Exemption list should be on the internet.	§ 11-200.1-16	Exemption lists are available on the OEQC web site, as well as many of the agencies' websites: <a href="http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/">http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/</a>

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Stuart Coleman, Surfrider	Definitions	<p>Actions should not have to have a beginning and end, or to be planned, to be covered by Chapter 343. Suggests the following</p> <p>(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:</p> <p>(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof.</p> <p>(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.</p> <p>(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval. [...]</p>	§ 11-200.1-2	<p>The suggested definition for "project" is overly broad and appears to incorporate considerations expressed in the triggers. It would lead to EISs for laws, county general plans (which are specifically excluded by statute), and government policies. The definition for program in the Final Proposed Rules appears to address most of the topics raised in the suggested comment.</p>
	Definitions	A definition of mitigation is needed. NEPA and CEQA have one.	§ 11-200.1-2	<p>The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. This essentially defines mitigation within the Final Proposed Rules.</p>
	General; Objectivity in Preparation	<p>Why are applicants preparing their own EAs and EISs? Why are they determining what is a substantive comment and how to respond to it? The rules are addressing the applicant to do these things. The rules should ensure that the HRS Chapter 343 environmental review process is fair and objective – that the fox is not guarding the hen house. Agencies must retain oversight and responsibility for ensuring the adequacy of EAs and EISs.</p>	§§ 11-200.1-12, 11- 20.1-14(d), and 11-200.1-20(c),	<p>Chapter 343, HRS, prescribes that the agency has responsibility for determining when Chapter 343, HRS, applies, what level of review to undertake, and if the law is satisfied at the end of the process. Unlike with NEPA, which provides for an agency to allow an applicant to prepare the document, Section 343-5(e), HRS, states that the agency requires the applicant to prepare the EA or EIS. This is why the rules address the applicant. The agency is responsible for deciding if the applicant has met the standard for sending the draft EA or EIS out for public comment and issuing a FONSI or acceptance. In turn, agencies are the entities that are the objects of judicial appeal. It is in their interest to ensure that the information is accurate and complete.</p>
	General; Objectivity in Preparation	<p>Proposed Section states "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, an EIS shall include responsible opposing views, if any, of significant environmental issues raised by the proposal." With contentious issues, where different parties have opposing views, it's foreseeable that an agency or applicant may deem a differing view to be "irresponsible," but that doesn't mean that the opposing view should not be raised or given valid consideration in the EIS. Similarly, subsection (b) provides that "less important material [in an EIS] may be summarized, consolidated, or simply referenced." Particularly where an applicant is authorized to prepare its own EIS and respond to comments in its own EIS, this presents a concern – as applicants would be able to determine what is more and what is less important, and thereby avoid full and adequate discussion on certain issues.</p>	§ 11-200.1-24(a)	<p>This language has been retained from the original (see 11-200-16 Content Requirements). To ensure that potential court review does not determine that diverse but responsible views were suppressed, agencies and applicants generally greatly err on the side of caution to include discussion of diverse ideas. However, some viewpoints expressed in comments are irrelevant or inappropriate (such as extensive profanity and insults without making a point) and detailed discussion and refutation of such comments is not in the public interest. The Final Proposed Rules also make clear in section 11-200.1-28 Acceptability that the accepting authority has responsibility to ensure that comments were appropriately identified as substantive, to not just take the applicant's word on it, and consider whether the response was commensurate to the comment. This is already the accepting authority's duty and responsibility and the Final Proposed Rules makes it explicit.</p>

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	General Types of Actions Eligible for Exemption	Many of the proposed revisions will result in vague, potentially broad exemptions. For example, under proposed § 11-200.1-15(c)(1), what will constitute a "minor" expansion or a "minor" change in existing use? (Examples provided in comment, such that we should provide percentages for increases in height, other percentages for increase in area, etc.)	§ 11-200.1-15	The existing and Final Proposed Rules in general do not specify design thresholds, as the focus is on potential for impact. An example of a minor change in use may be from a restaurant to a food bank, which may trigger Chapter 343, HRS, because of the involvement of government funds but the current rules do not provide for a means for an exemption. Similarly, context is important. The Council has to ensure the rules are applicable and meaningful across the entire state for all islands and contexts. Adding a fourth story to a three-story building in an urbanized area such as Waikiki may not have much potential for significant impact but could on Molokai. In order to reduce the potential misuse of exemptions, the Council proposes requiring agencies to publish in the periodic bulletin lists of what they have exempted each month so that the public may review them. The existing rules only require agencies to make a record of the exemption and produce it to the public upon request.
	Supplemental EISs	As is, subsections 11-200.1-30(a) and (b) contain several triggers, which should be re-written more clearly and concisely in one subsection.	§ 11-200.1-30(a) and (b)	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The Green Sheet allows all factors, including a change in the project or anticipated impacts, leaning toward or against additional review, to be considered and tracked through a formal, internal process. The Council deferred making edits to the supplemental EIS sections but did introduce section 11 as a means to promote good practice such as DPP's Green Sheet. The OEQC can also issue guidance on better implementing these sections.
Lynn McCrory, Pulama Lanai	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS; Consultation generally	Support greater discussions with the community/agencies on proposed actions; Agree that differentiation between Project and Program helps clearly define the expanse of the proposed action. Concur that multiple look-alike letters with only a signature difference, along with nonsubstantive comments, should not be responded to individually. Agree that State or County should be allowed to consider NEPA FONSI or CatExs as part of Chapter 343 EA. the public and agencies.	§§ 11-200.1-20, -23, -26	Comment acknowledged.
	Public Review and Comment Response Requirements for EAs and EISs	Substantive comments should require an individual response.	§ 11-200.1-20(d)	Any substantive comment will require response, with two options available on how to conduct it.
Donna Wong, Hawaii Thousand Friends	Definitions	Replace "may" with "shall" in the second to last line of the definition of exemption list.	§ 11-200.1-2	An agency is not obligated to have a Part Two of the list, which would occur if "may" were replaced with "shall".
	Definitions	Add a definition for "plan".	§ 11-200.1-2	A definition for "plan" is unnecessary. Actions are for "projects" and "programs". While the statute and rules reference plans, the term is used in its everyday meaning, not as a term of art for the environmental review process.
	Definitions	Add a definition for "minor".	§ 11-200.1-2	"Minor" is used in its everyday sense. The context of its use in the rules explains what may be considered minor.
	Filing Requirements for Publication and Withdrawal	Mention the purpose and location of the Hawaii Documents Center. Most people are unaware of it.	§ 11-200.1-5	The OEQC guidebook and website can assist with the purpose and location of the Hawaii Documents Center.
	General Types of Actions Eligible for Exemption	Include examples of what are considered minor expansion or change in use, otherwise the public is unaware of the extent of work that can be done.	§ 11-200.1-15	The existing and Final Proposed Rules in general do not specify design thresholds as the focus is on potential for impact. An example of a minor change in use may be from a restaurant to a food bank, which may trigger Chapter 343 because of the involvement of government funds but the current rules do not provide for a means for an exemption. Similarly, context is important. The Council has to ensure the rules are applicable and meaningful across the entire state for all islands and contexts. Adding a fourth story to a three-story building in an urbanized area such as Waikiki may not have much potential for significant impact but could on Molokai. In order to reduce the potential misuse of exemptions, the Council proposes requiring agencies to publish in the periodic bulletin lists of what they have exempted each month so that the public may review them. The existing rules only require agencies to make a record of the exemption and produce it to the public upon request.
	General Types of Actions Eligible for Exemption	Affordable housing is needed but an exemption is dangerous and it would be negligent to exempt housing developments without considering the impacts to the surrounding community, such as traffic, public parks. Add conditions for not being located near streams, endangered species, prone to flooding or a flood zone, or area that is vulnerable to sea level rise.	§ 11-200.1-15	The proposed paragraph (10)(D) captures these recommended additions by the language "does not require siting in an environmentally sensitive area". This makes explicit the general requirement that an exemption is inapplicable when a sensitive environment is involved.

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	Exemption Lists	Restore the word "shall" instead of the change to "may" in the first line.	§ 11-200.1-16	Not all agencies have exemption lists, hence the change to "may". Any agency is able to make an exemption determination under the rules without having an exemption list. Such exemption notices, as well as ones made by agencies with exemption lists, are addressed in -16(d) and section 11-200.1-17.
	Preparation and Contents of a Draft Environmental Assessment	Add historical after cultural in the summary description of (d)(5)	§ 11-200.1-18	The word "historical" has been added, per this comment, and now matches changes made in the significance criteria.
	Preparation and Contents of a Draft Environmental Assessment	Add archaeological site maps and maps showing locations of endangered and/or threatened flora and fauna and their habitat.	§ 11-200.1-18	These maps, and any others necessary to adequately explain existing resources and potential impacts, are captured in the existing items (6) and (7) without need to be expressly stated.
	General; Drafting style	Use numbers instead of spelling out number(s).	§ 11-200.1-20	The Hawaii Legislative Reference Bureau (LRB) Hawaii Legislative Drafting Manual principles call for spelling out numbers in this situation.
	Acceptability	The paragraph is too long. Break it up at "The agency shall notify the applicant and the office..."	§ 11-200.1-28	As recommended, the Final Proposed Rules reorganize this section to enhance readability.
Susan Strom	Purpose	Wonders why word "detail" in (c)(1) was omitted.	§ 11-200.1-1(c)(1)	Taking out the word "detail" is consistent with the Council's goal of ensuring that proposing agencies and applicants focus on substance over form.
	Purpose	Proposes replacing "take care" with "take every measure."	§ 11-200.1-1(c)(2)	Language has been modified to be grammatically correct and increase readability. It can be assumed that proposing agencies and applicants would take every measure to concentrate on the important issues.
	Definitions	Asking for evaluation of the definition of "discretionary consent".	§ 11-200.1-2	The rules have been revised to combine the definitions of "discretionary consent" and "ministerial consent" and ensure the definition of "discretionary consent" is consistent with Chapter 343, HRS.
	Definitions	Concerned that definition of "EIS preparation notice" is too onerous and that it gives too much discretion to the agency to decide whether a proposed action may have a significant impact.	§ 11-200.1-2	This definition was updated to incorporate the direct-to-EIS route pursuant to Section 343-5(e), HRS. This section only allows an agency to use its judgment and experience to determine whether an agency or applicant may begin with an EISPN, so an applicant must consult with an agency first to receive this authorization.
	Definitions	Asking why the definition of "environmental impact" definition has been stricken.	§ 11-200.1-2	The definition of "environmental impact" was deleted because it was unnecessary - both "impact" and "environment" are already included as defined terms.
	Definitions	Concerned that "exemption list" definition is onerous and gives increased powers to the agency.	§ 11-200.1-2	This definition has been changed to reflect the updates to the exemption process, recognizing that an exemption notice may be prepared for both agency and applicant actions.
	Definitions	Points out that "program" definition combines a series of projects, and seems to be concerned that this can include multiple projects with ambiguous timeframes over a wide geographical area.	§ 11-200.1-2	The definition of program was added to distinguish between projects and programs, and to provide guidance after the Hawaii Supreme Court's decision in Umberger v. DLNR, 403 P.3d 277 (2017).  The Proposed Rules have attempted to weave in the concept of programmatic environmental review, which is most appropriate for evaluating the impacts of a wide range of individual projects, implementation over a long timeframe, or implementation across a wide geographic area.
	Definitions	Concerned that the last paragraph in this section, which says that a proposing or approving agency may use its admin rules or statutes to interpret undefined terms, gives agencies free license to act on any undefined terms not included in this section.	§ 11-200.1-2	This is the recognized standard for statutory interpretation, and does not give agencies free reign to make up definitions on a whim, as agencies must look to their administrative rules or statutes first.
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (b) has been amended to remove the requirement to inform the public prior to the action and that the Periodic Bulletin informs the public of actions/decisions after they have already been made.	§ 11-200.1-4(b)	The Council does not see this as an issue, as the periodic bulletin informs the public of "actions undergoing Chapter 343," which includes projects/programs under environmental review before decision-making has commenced, as well as "associated public comment periods."
	Filing and Publication in the Periodic Bulletin	Concerned that language about notices of the "availability of EAs" has been removed	§ 11-200.1-4(b)(3)	Language has been modified to be grammatically correct and increase readability. The periodic bulletin includes links to Draft and Final EAs.
	Filing and Publication in the Periodic Bulletin	Implies that only those addenda deemed appropriate by the Office will be in the Periodic Bulletin. Public comments on addenda are limited to 30-day comment periods.	§ 11-200.1-4(b)(3)	Addenda are rarely used in the process but the Final Proposed Rules retain them as an option for agencies and applicants to share with the public corrections to "clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft EA or draft EIS already filed with the office." On occasion, the entity wishing to publish an addendum may include new or supplemental information that is not appropriate to be published in an addendum, in which case OEQC notifies the entity and requests that they remove the material before publishing. Comment periods for addendum match the comment period for their related document; e.g., 30 days for an addendum to an EA and 45 days for an addendum to an EIS.

Name	General Topic	Specific Comment	Rules Section	Response
	Filing and Publication in the Periodic Bulletin	Concerned that the determination whether supplemental EISs are required or not rests with the agency.	§ 11-200.1-4(b)(6)	It is correct that the agency makes the determination of whether or not supplemental EISs are required.
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (d) gives OEQC the power to publish other notices, contingent upon space or time.	§ 11-200.1-4(d)	This is existing language in the 1996 Rules with only the addition of time, as the proposed rules shorten the time between the submittal deadline and publication. OEQC publishes other information of interest and relevance to the public upon request or its own volition, a function which is supported by the Council.
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (a) gives agencies the ability to file notices last minute and allows little time for public intervention.	§ 11-200.1-5(a)	The submission deadline has been decreased from 8 to 5 days because the OEQC no longer needs the extra time to prepare the bulletin. Further, the time for public intervention is not at this stage. The bulletin is published to inform the public of actions undergoing environmental review, as well as the associated public comment periods.
	Identification of Approving Agency or Accepting Authority	Points out that subsection (a) allows for an authorized representative of the Governor as an accepting authority	§ 11.200.1-7(a)	The language is a grammatical clarification.
	Identification of Approving Agency or Accepting Authority	Same with an authorized representative of the Mayor	§ 11.200.1-7(a)	The language is a grammatical clarification.
	Identification of Approving Agency or Accepting Authority	Concerned that subsection (b) creates a conflict of interest because the approving agency is also the accepting authority	§ 11.200.1-7(b)	This is about clarifying that with respect to EISs, the approving agency is also called the accepting authority. This is only relevant to applicants, not other agencies so the agency issuing the permit to an applicant is also the one evaluating the EIS for acceptance. Subsection (c) also provides guidance to agencies on how to select the most appropriate accepting authority, including a list of considerations.
	Applicability of Chapter 343 to Agency Actions	Suggests looking to HRS 205-5(b) for exemptions and requirements regarding actions involving agricultural tourism	§ 11.200.1-8(a)(3)	The Council removed this per recommendation from the State Office of Planning as the use of state or county lands or funds would be the applicable trigger rather than a potential agricultural tourism ordinance.
	Applicability of Chapter 343 to Applicant Actions	Concerned that (a)(2)(b) loosens the requirement involving agricultural tourism	§ 11-200.1-9(a)(2)(b)	This section does not loosen any requirements, but explicitly references agricultural tourism as provided under HRS Section 343-5(a)(1) and Chapter 205, HRS, which allows the counties to require an EA for agricultural tourism use in certain circumstances.
	Applicability of Chapter 343 to Applicant Actions	Concerned that subsection (b) creates avenues to avoid the environmental review process	§ 11-200.1-9(b)	This section recognizes that an applicant action may require multiple approvals and should be considered as part of the whole action and not create discrete actions. Subsection (b) is statutory text from Section 343-5.5, HRS, repeated in the Final Proposed Rules and makes clear that when a primary action that does not require discretionary consent and that involves a secondary action that is ancillary, the secondary action shall be exempt from environmental review, provided that no further discretionary approvals are required.
	Multiple or Phased Actions	Concerned that “project” is replaced with “action”	§ 11-200.1-10(1)	Throughout the Final Proposed Rules, “action” has replaced “project” and definitions of “program” and “project” were added to provide guidance after the court case <i>Umberger v. DLNR</i> , 403 P.3d 277 (2017).
	Multiple or Phased Actions	Concerned that requiring a single EA/EIS of related actions creates potential gaps in environmental protection	§ 11-200.1-10(1)	By clarifying the scope of an action, this section is intended to reduce the potential for segmentation.
	Use of Prior Exemptions, FONSI, or Accepted EISs	Proposes that this section is stricken or re-drafted to involve more outside participation.	§ 11-200.1-11	This section clarifies how and when an agency may determine that a prior exemption, final EA, or accepted EIS satisfies Chapter 343, HRS. The proposed rule intends to create a consistent process and provide agencies with direction on what to consider when determining if a proposed action is covered under a prior exemption, final EA, or accepted EIS.
	Determination of Significance	General comment that amendments in this section allow agencies and applicants to “piggyback” on prior determinations to avoid environmental review.	§ 11-200.1-11	The existing 1996 Rules allowed for use of prior determinations and accepted EISs to satisfy Chapter 343, HRS, requirements. The Final Proposed Rules continues to allow this use and clarifies how and when a prior determination or document may be used.
	Significance Criteria	Concerned that the term “substantial” as used in subsection (b) to refer to “adverse effects” is overly vague and needs to be clarified.	§ 11-200.1-13(b)	The Final Proposed Rules retain the word “substantial” from the 1996 Rules. Combining “substantial” and “adverse” is meant to set a standard that is higher than just having an effect and emphasizes that the focus is on negative effects rather than positive ones. Specifying a “loss ratio” (i.e., losing over 100 endangered birds) as the commenter suggests would be overly burdensome given that every action undergoing environmental review is different.
	Determination of Level of Environmental Review	Concerned that this section allows agencies to prepare EAs and EISs in-house.	§ 11-200.1-14	Agencies are allowed by statute to prepare their own documents and required by statute to make significance determinations for their own proposed actions, and the rules cannot override this.
	General Types of Actions Eligible for Exemption	Subsection (a) removes the requirement that agencies obtain the advice of outside agencies or individuals with expertise as to the propriety of the exemption.	§ 11-200.1-15(a)	11-200.1-17(b) retains the requirement that agencies obtain the advice of outside agencies or experts when drafting an exemption notice. That language was taken out of 11-200.1-15 for housekeeping purposes.
	General Types of Actions Eligible for Exemption	Subsection (c) is expanded to allow for “minor” expansions and changes as eligible for exemption.	§ 11-200.1-15(c)	“Negligible” has been replaced with “minor” and “or no” before “expansion or change” has been removed because activities that are “negligible” and require “no expansion” and “no change” are now captured in the de minimis category and should be reflected in part one of an agency’s exemption list.

Name	General Topic	Specific Comment	Rules Section	Response
	Exemption Lists	Subsection (b) gives an agency the ability to exempt a specific activity if it has a minimal impact.	§ 11-200.1-16	The Final Proposed Rules revise the exemption list to consist of 2 parts, the first being those types of actions the agency considered to be de minimis, including routine operations and maintenance, ongoing administrative activities and other similar items. These activities are presumed to not require documentation (i.e., an exemption notice) or consultation. Many of these items already exist on agency exemption lists.
	Exemption Notices	Concerned with absence of definition for “negligibly” in subsection (a).	§ 11-200.1-17	There is no need to define this term.
	Exemption Notices	Restates what subsection (b) does.	§ 11-200.1-17	Comment acknowledged.
	Exemption Notices	Restates what subsection (c) does.	§ 11-200.1-17	Comment acknowledged.
	Preparation and Contents of a Draft EA	Restates what subsection (a) does.	§ 11-200.1-18(a)	Comment acknowledged.
	Notice of Determination for Draft EAs	Restates what subsection (b) does.	§ 11-200.1-19(b)	Comment acknowledged.
	Public Review and Response Requirements for Draft EAs	Notes that any comments outside of the 30-day comment period will not be considered in the Final EA.	§ 11-200.1-20(b)	Comment acknowledged.
	Public Review and Response Requirements for Draft EAs	Notes that subsection (c) is amended to provide that the proposing agency or applicant may deem whether comments are substantive vs. non-substantive in deciding whether a response is needed.	§ 11-200.1-20(c)	This section incorporates language from the comment response requirements for EISs in section 11-200.1-26 providing guidance on how to discern substantive from non-substantive comments. By differentiating between these types of comments and allowing for grouping of comment responses, the Final Proposed Rules intend to modernize and simplify the environmental review process. The widespread availability of electronic documents to commenters and stakeholders relieves the necessity of sending individual written responses but still ensures that commenters receive notice that their comment has been received, considered, and responded to.
	Notice of Determination for Final EAs	Restates what subsection (a) does.	§ 11-200.1-22(a)	Comment acknowledged.
	Notice of Determination for Final EAs	Commenter believes that the requirement to file notice of a FONSI or EISPN has been deleted.	§ 11-200.1-22(b)	The requirement to file the notice with the office in accordance with subchapter 4 is retained in 11-200.1-22(a)(3). Subsections (b) and (c) were revised to clean up the language and streamline.
	Consultation Prior to Filing a Draft EIS; Content Requirements	General comments about the preparation of an EIS and the 30-day comment period for an EISPN.	§§ 11-200.1-23, -24	Comment acknowledged.
	Content Requirements; Draft EIS	Concerned about language removed in subsection (b)	§ 11-200.1-24(b)	This language was edited to bring it in line with NEPA language, and provides that the scope and specificity within an EIS will be commensurate with the scope of the action and the degree of specificity to which impacts are discernable at the time of preparation.
	Content Requirements; Draft EIS	Thinks subsection (c) allows for the avoidance of issues/impacts which are not yet discernable.	§ 11-200.1-24(c)	By providing language on the level of detail and style of assessment for different types of actions, the Final Proposed Rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review and project specificity.
	Content Requirements; Draft EIS	Concerned that subsection (n) deleted that “Resources” also means the “natural and cultural resources committed to loss or destruction by the action.”	§ 11-200.1-24(n)	This deletion is not an issue because subsections (i) and (j) explicitly include “cultural” resources as part of the impacts to be analyzed in line with Act 50.
	Content Requirements; Draft EIS	Suggests amending subsection (o) to include “culturally sensitive and/or relevant sites” when addressing probable adverse environmental effects	§ 11-200.1-24(o)	This is not required because this section lists laws and guidelines that the draft EIS must address adverse effects on. In addition, any laws relevant to the significance criteria that required preparation of the EIS, including culturally sensitive areas, should be addressed.
	Comment Response Requirements for Draft EISs	Restates what subsection (a) does.	§ 11-200.1-26(a)	Comment acknowledged.
	Content Requirements: Final EIS	Concerned that subsection (a) amends the requirement for a final EIS to discuss all “relevant and feasible” consequences to all “reasonably foreseeable” consequences.	§ 11-200.1-27(a)	This language was changed to align with NEPA language. There is more case law and federal guidance to assist in interpretation and application to various circumstances.
	Acceptability	Suggests that the rules have been amended to give the Governor final authority to accept an EIS when it involves state and county lands or funds, overriding local authority to do so.	§ 11-200.1-28(c)	The Governor has this authority per Chapter 343, HRS, and is in the 1996 Rules. The language has been revised slightly for clarity.

Name	General Topic	Specific Comment	Rules Section	Response
	Acceptability	States that subsection (e) identifies the accepting authority and approving agency as one and the same	§ 11-200.1-28(e)	The language is to clarify that in the instance of an applicant EIS, the approving agency is the accepting authority.
	National Environmental Policy Act	Concerned that subsection (2), in allowing federal exemption to be considered in the state or county agency determination, could have dire consequences for reserve lands.	§ 11-200.1-31(2)	The Council does not envision how the consideration of a federal categorical exclusion would have dire consequences for reserve lands. The Final Proposed Rules say the exemption can be considered, not that it will be controlling. Agencies still have an obligation to make their own determination pursuant to Chapter 343, HRS, and the Final Proposed Rules.
	National Environmental Policy Act; Use of Prior Determinations	Concerned that subsection (3) shifts compliance from federal to state and county and that NEPA is ambiguous	§ 11-200.1-31(3)	The proposed rule says the federal FONSI may be considered, not that it is dispositive of any state or county determination. The Final Proposed Rules say the exemption can be considered, not that it will be controlling. Agencies still have an obligation to make their own determination pursuant to Chapter 343, HRS, and the Final Proposed Rules.
	Retroactivity	General comments about potential consequences of the retroactivity section.	§ 11-200.1-32	Comment acknowledged.
	Retroactivity	Subsection (c) - asks how exemption lists should be considered or reviewed before the 7 year time period?	§ 11-200.1-32	The Final Proposed Rules provide for exemption lists that have received concurrence under the 1996 Rules to have 7 years to revise and receive concurrence under the Final Proposed Rules, which is consistent with the Final Proposed Rules stating that agencies are to obtain Council concurrence every 7 years.
Anne Walton	Definitions	Just want to make it clear that "acceptance" only means the EIS complies with 343, HRS, it does not mean the action is approved or can be implemented. A determination of acceptance is required prior a prerequisite to implementing or approving the action, but does not necessarily ensure the action will be approved.	§ 11-200.1-2	The Final Proposed Rules language expresses the concepts raised in the comment.
	Definitions	The "accepting authority" and "approving authority" should be one in the same. As such, it would probably be much easier to just pick one term and not use them interchangeably. Also, if the "accepting authority" is proposing the action an accepting the EIS, that is a clear conflict of interest. "Accepting authority" will not be an official from or an agency that is proposing the action for which a determination on the need for an EIS is being requested; nor can an official from or an agency that is proposing an action make the final determination if an EIS fulfills the definition and requirements of an EIS.	§ 11-200.1-2	"Accepting authority" and "approving agency" are only the same entity in one specific context: an applicant action undergoing an EIS. In the case of agencies, the state or county agency makes the determination that an EIS is required and then that respective agency's political leader (governor or mayor) is the accepting authority for the EIS. In the case of applicants, the approving agency makes the decision that an EIS is required and also serves as the accepting authority.
	Definitions	The approving agency should be just that, and not creating addendums to the EA or DEIS as that may pose a conflict of interest. "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..."	§ 11-200.1-2	An addendum is defined as being an attachment to only a draft EA or draft EIS. In the case of an EA, the Final Proposed Rules require that the proposing agency or approving agency file the draft EA with the OEQC for publication. Only agencies can ask OEQC to publish EAs because the EA is accompanied by an anticipated FONSI in the case of a draft EA. In the case of EISs, applicants are required by statute to prepare the document and the applicant submits it to the OEQC for publication and simultaneously to the accepting authority. The accepting authority is not formally involved with the request to OEQC to publish the draft EIS so would not have a role in preparing an addendum and filing it with the OEQC.

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions	"Accepting authority" definition follows the one recommended above in #2 "Approval" means a discretionary ministerial consent required from an accepting authority 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.]	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by Chapter 343, HRS, which defines "approval" and "discretionary consent". The Final Proposed Rules must be consistent with statutory definitions. Section 343-2, HRS, defines "approval" as a "discretionary consent" and defines "discretionary consent" as a "consent, sanction, or recommendation...for which judgment and free will may be exercised..."
	Definitions	"Accepting authority" definition follows the one recommended above in #2 "Approving agency" means an agency that issues an approval prior to [actual] implementation of an applicant action and is functionally the same as or synonymous with the accepting authority.	§ 11-200.1-2	"Accepting authority" and "approving agency" are not functionally the same in all instances so defining them as such would not be consistent with Chapter 343, HRS.
	Definitions	Discretionary consent should not be an option as it is just that and could lead to some unjustifiable decision making. There needs to be a basis for consent. "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 accepting authority upon a given set of facts, as prescribed by law without the use of judgment or discretion.	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by Chapter 343, HRS, which defines "approval" and "discretionary consent". The Final Proposed Rules must be consistent with statutory definitions. Section 343-2, HRS, defines "approval" as a "discretionary consent" and defines "discretionary consent" as a "consent, sanction, or recommendation...for which judgment and free will may be exercised..."
	Definitions	Add "accepting agency's ministerial consent". "EIS preparation notice[,]", [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 agency's accepting authority's ministerial consent judgment and experience that the proposed action may have a significant effect on the environment.	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by Chapter 343, HRS. An EIS preparation notice is determined to be required by the proposing agency for state or county actions and by the approving agency for applicant actions and the decision to proceed to an EIS directly is not related to a ministerial consent.
	Definitions	Delete proposing agency from "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 the applicant determines to be exempt from preparation of an EA.	§ 11-200.1-2	The Council considered this comment and has declined to delete the requested language. Chapter 343, HRS, authorizes agencies to issue exemptions for their own actions when they do not have the potential for significant impact and meet other criteria as set by the Council. Agencies may also issue exemption notices on behalf of applicants.
	Identification of Approving Agency or Accepting Authority	See point #2 above about "approving" and "accepting authority". If they are one in the same, they need to be stated as such in the definitions. Also, the "approving agency" should not be the proposing agency. (2)(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.	§ 11-200.1-7	The approving agency and accepting authority are not the same in all cases. However, they are synonyms in the case of applicant EISs, which is why the Final Proposed Rules identifies the situation as such. The terminology is a product of Chapter 343, HRS, and any confusion from the terms must be addressed in the statute. "Accepting authority" and "approving agency" are only the same entity in one specific context: an applicant action undergoing an EIS. In the case of agencies, the state or county agency makes the determination that an EIS is required and then that respective agency's political leader (governor or mayor) is the accepting authority for the EIS. In the case of applicants, the approving agency makes the decision that an EIS is required and also serves as the approving agency.

Name	General Topic	Specific Comment	Rules Section	Response
	Applicability of Chapter 343, HRS; Definitions	Delete item 11-200.1-9(b)(2)(A)	§ 11-200.1-9	The Council considered this comment and has declined to delete the definition of "discretionary consent". The definition is directly from Section 343-5.5, HRS, and the definition of "discretionary consent" is specific to this subsection of the rules.
	Use of Prior Determinations	As is, this leaves open too much opportunity for sliding a proposed action through the system based on another approved action and without adequate due process. 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 determination explaining its 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 and approval by the approving agency.	§ 11-200.1-11	The existing Chapter 343, HRS, process currently allows for agencies to identify whether something falls under an existing action that has completed environmental review and the Council does not believe that the Final Proposed Rules provide a mechanism for actions to be approved without going through the proper process. Documents prepared under Chapter 343, HRS, are informational only and do not in and of themselves approve or deny any action. The determination of prior environmental review coverage is done by both proposing agencies and approving agencies. The Council considered the comments made regarding the use of the word "activity" in the draft of the Proposed Rules and revised the term from "activity" in this section to "action" as more appropriate.
	Determination of Significance	Suggest putting this piece back into the mix per the above comment #8: [(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.]	§ 11-200.1-12(c)	The language was deleted and moved to Section 11 which now addresses the use of prior determinations. The Council believes that the new placement of the language in Section 11 works better with the new organization of the rules and offers more direction to agencies in using prior determinations.
	Significance Criteria	Not sure this proposed change makes grammatical sense: (1) [Involves an irrevocable commitment to loss, harm or destruction of any natural or cultural resource] Irrevocably commit a natural, cultural, or historic resource;	§ 11-200.1-13	The language of this subsection has been revised to address the grammatical error, but has not substantively been changed.
	Significance Criteria	"Substantial adverse effect" is not defined in the definitions section, yet is used widely throughout the "Significance Criteria" section. Seems like we need a definition.	§ 11-200.1-13	The Council intends that these words be read in their everyday meaning and thus has not proposed defining them. What is substantial in one context or environment may not be in another.
	Determination of Level of Environmental Review	Remove "proposing agency" throughout this section.	§ 11-200.1-14	Under Chapter 343, HRS, the proposing agency is the agency that determines whether Chapter 343, HRS, applies and what level of environmental review to undertake. The Council will keep the use of this term.
	General Types of Actions Eligible for Exemption	Go back to the original language as it is clearer and stronger: (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.	§ 11-200.15(a)	The Council has adopted the proposed language as the concepts in the 1996 Rules are expressed more succinctly in the Final Proposed Rules or are further expanded on in subsections or sections 11-200.1-16 or 11-200.1-17.
	Preparation and Contents of a Draft Environmental Assessment	Remove "agency". (9) Agency or a Approving agency [determination or, for draft environmental assessments only an] anticipated determination, including findings and reasons supporting the anticipated FONSI, if applicable; and	§ 11-200.1-18	The language inadvertently omitted "proposing" before agency. The Final Proposed Rules have been revised to include "proposing".

Name	General Topic	Specific Comment	Rules Section	Response
	Notice of Determination for Final Environmental Assessments	Remove “proposing agency”. : (b)[Negative declaration] 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].	§ 11-200.1-19(b)	Under Chapter 343, HRS, the proposing agency is the agency that determines whether Chapter 343, HRS, applies and what level of environmental review to undertake. The Council will keep the use of this term.
	Notice of Determination for Final Environmental Assessments	Remove “proposing agency” and retain the last clause. : (c)[Environmental impact statement preparation notice] 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].	§ 11-200.1-22(c)	Under Chapter 343, HRS, the proposing agency is the agency that determines whether Chapter 343, HRS, applies and what level of environmental review to undertake. The Council will keep the use of this term. The last clause was deleted and consolidated into section 11-200.1-5 on filing.
	Notice of Determination for Final Environmental Assessments	Please retain this section: [(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.]	§ 11-200.1-22(d)	This paragraph was deleted and consolidated into section 11-200.1-5 on filing.
David Arakawa, Land Use Research Foundation	General	Some EIS challenges are used as delay tactics. A common complaint is that project opponents use the EIS rules and technicalities to bring legal challenges and lawsuits to delay or stop projects, and new rules provide more litigation opportunities. This fact is not sufficiently addressed in the proposed rules or rationale.	n/a	The Council acknowledges this concern. Legal challenges to exemptions, EAs, and EISs, and deadlines to those challenges, are set forth by Chapter 343, HRS. The Final Proposed Rules are not intended to create new litigation points that are not otherwise authorized by statute.
	General	Some of the new requirements are not consistent with the purpose, intent and process of Chapter 343 and EIS Rules. The purpose of the environmental review process is to create informational documents and allow public participation which disclose to decision-makers the significant and cumulative effects of a proposed action on the environment, economic and social welfare and cultural practices; mitigate measure to minimize such effects; alternatives to the action and effects; and includes satisfactorily responses to comments received during the review of the EIS. The EIS is not a permit or approval, it is a preliminary step in the discretionary approval process which also include various other opportunities for review of environmental issues, alternatives, public comment and responses by the applicant and/or agencies.	n/a	Comment acknowledged.
	General	Unnecessary, duplicative and/or gratuitous changes. The majority of the current EIS rules work (no lawsuits); over 90% of the EIS’ are “accepted;” the subject matter of some of the proposed changes are already addressed in the existing EIS law or rules; and the rationale for certain proposed changes are based on questionable “comments,’ which should not justify a rule change;	n/a	Comment acknowledged.
	General	New rule changes which include vague, subjective, unenforceable or unnecessary requirements will result in conflicting interpretations, more uncertainty, needless confusion and unnecessary litigation;	n/a	Comment acknowledged.

Name	General Topic	Specific Comment	Rules Section	Response
	General	Unintended negative consequences. These legal challenges result in increased costs and delays for needed infrastructure and housing projects;	n/a	Legal challenges to exemptions, EAs, and EISs, and deadlines to those challenges, are set forth by Chapter 343, HRS. The Final Proposed Rules are not intended to create new litigation points that are not otherwise authorized by statute.
	General	Unfair, one-sided and biased against agencies and applicants. Some of the proposed EIS rule changes do not address all relevant concerns in a fair and equitable manner.	n/a	Comment acknowledged.
	Purpose	(c) In preparing any document, proposing agencies and applicants shall: (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.  It is impossible to impose an aspirational "spirit" requirement with vague and subjective terms. This proposed revision requires "consultation" that is "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."	§ 11-200.1-1(c)(3)	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the process and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.
	Purpose	Additional requirements are not consistent with the EIS law: Chapter 343 and the relevant case law do not require adherence to a "spirit."	§ 11-200.1-1	Comment acknowledged.
	Purpose	Unnecessary, duplicative and/or gratuitous change: No EIS has been rejected (not accepted) or litigated on the basis of failure to have the appropriate "spirit."	§ 11-200.1-1	The language in this subsection (b) exists in the 1996 Rules. The language in subsection (c) is meant to be aspirational and indicate how to go through the environmental review process. The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.
	Purpose	Conflicting interpretations and needless confusion will occur, due to new terms which are vague and subjective: "mutual, open and direct, two-way communication, in good faith, and meaningful participation."	§ 11-200.1-1(c)(3)	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language.
	Purpose	Unintended negative consequences: An unreturned, or delayed response to a text, phone call or email by the applicant or an opponent could violate this section. This section could also be violated and the EIS process could be challenged if a project opponent neglects, or refuses to consult in a "mutual, open and direct, two-way communication, in good faith," or refuses to engage in "meaningful participation."	§ 11-200.1-1	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language.
	Purpose	Will result in unnecessary litigation: Project opponents could bring legal challenges and lawsuits claiming a violation of this section.	§ 11-200.1-1	The Purpose section is not intended to create new litigation points that are not otherwise authorized by statute.
	Purpose	Unfair, one-sided and biased against proposing agencies and applicants: The proposed "spirit" requirements for proposing agencies or applicants, can result in lawsuits against the proposing agencies and applicants, but not against any project opponents or others who do not comply with the mandated "spirit."	§ 11-200.1-1	The language in this section is intended as direction to the agencies, applicants, and the courts.
	Purpose	> While aspirational, and a worthy goal, this vague, subjective and unenforceable "spirit" requirements should be DELETED.	§ 11-200.1-1	The language in this section is intended as direction to the agencies, applicants, and the courts.

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions	Definitions - Environmental Assessment (p. 4) The proposed revision would change the definition of "environmental assessment" from a written evaluation "to determine whether an action may have a significant environmental effect," to a written evaluation "that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect."	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term and is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The "evidence" supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The Council understands the 1996 Rules as already implicitly including an analysis of evidence. The language used in the Final Proposed Rules serve to clarify the existing requirements.
	Definitions	Unnecessary, duplicative and/or gratuitous changes. LURF understands that there is no major problem of EAs being rejected for "insufficiency," or failure to satisfy the requirements of Chapter 343 or the EIS Rules. Assuming that to be true, this proposed new definition of environmental assessment is unnecessary.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term and is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The "evidence" supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The Council understands the 1996 Rules as already implicitly including an analysis of evidence. The language used in the Final Proposed Rules serve to clarify the existing requirements.
	Definitions	The proposed new "sufficient evidence" requirement is inconsistent with the current EIS law. Chapter 343, HRS, does not require the presentation of "sufficient evidence." The current definitions in Chapter 343 are working, so there is no need to add more subjective wording. Chapter 343, HRS, already describes an EIS as "an informational document...which discloses the environmental effects of a proposed action..." Chapter 343, HRS, already defines an EA as a "written evaluation to determine whether an action may have a significant effect." "Sufficient evidence" is not a defined term in Chapter 343, or in the EIS Rules, this it is subjective and may be interpreted several different ways. "Evidence" is a legal term used in litigation; submittal and acceptance of evidence requires certain specific legal requirements that are not required of EAs or Chapter 343, HRS. The "sufficiency" of an EA or EIS is a question of law (not a requirement for the preparation of an Environmental Assessment).	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term and is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The "evidence" supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The Council interprets the existing 1996 rules as already implicitly including an analysis of evidence. The language used in the Final Proposed Rules serve to clarify the existing requirements.
	Definitions	Conflicting interpretations and needless confusion will result from the proposed new requirement of "sufficient evidence," which is a vague, subjective, undefined requirement which must be determined by a court of law. Given the term "sufficient evidence," the preparers of EAs are likely to exercise more caution, and prepare even more lengthy EAs, with non-relevant information. Unnecessary litigation by project opponents will result from vague and subjective terms and conflicting interpretations of "sufficient evidence"; and Unintended negative consequences of litigation: Delay and increased costs for projects which could provide necessary infrastructure, housing, and other projects that will benefit the public. This vague, subjective and undefined requirement should be DELETED. The current rules and definitions are sufficient.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term and is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The "evidence" supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The Council interprets the 1996 rules as already implicitly including an analysis of evidence. The language used in the Final Proposed Rules serve to clarify the existing requirements.

Name	General Topic	Specific Comment	Rules Section	Response
	General Types of Actions Eligible for Exemption	<p>[8](6) Demolition of structures, except those structures [located on any historic site as designated in] that are listed on, or that meet the criteria of 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;</p> <p>This proposed revision would prohibit an exemption for the demolition of any structure built before 1968, based on a mere claim that the structure “meets the criteria” for listing on the national register or Hawaii Register of Historic Places (“Hawaii Register”). They are not consistent with the National Historic Preservation Act and the current EIS rules. The existing rule is sufficient and the proposed language may be outside the jurisdiction of the Council. This proposed language would create conflicting interpretations and needless confusion.</p>	§ 11-200.1-15	<p>The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".</p>
	New Requirement: Scoping Meeting and Audio Recording	<p>(d) At the discretion of the proposing agency or an applicant, a] No fewer than one 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.</p>	§ 11-200.1-23	<p>Comment acknowledged.</p>

Name	General Topic	Specific Comment	Rules Section	Response
	New Requirement: Scoping Meeting and Audio Recording	<p>The new requirement of public scoping meetings and audio recordings are inconsistent with Chapter 343, HRS. Chapter 343, HRS, already requires numerous opportunities for substantial public review and comment of environmental documents; already requires responses to the comments by agencies/applicants; and the formal determination of "acceptance" of an EIS already requires that it "adequately describes identifiable environmental impacts and satisfactorily responds to comments received during the review of the statement." Chapter 343, HRS, does not require a public scoping meeting or audio recordings.</p> <p>Unjustified and unnecessary changes and requirements: While LURF supports oral comments at public scoping meetings, there is no justification or facts that the lack of a public scoping meeting or lack of audio recordings have resulted in "non-acceptance" of, or a court finding "lack of sufficiency" of an EIS. In fact, the comments from scoping meetings are advisory only, and should not result in lawsuits that would overturn an EIS which has been lawfully "accepted."</p> <p>Unnecessary litigation: Even though the comments at public scoping meetings are recommendations only, project opponents could bring lawsuits claiming a violation of any technicality relating to scoping meetings, oral comments and audio recordings.</p>	§ 11-200.1-23	The Council's intent is for audio recordings to be only for portions of the public scoping meeting that are dedicated to oral comments (one person at a time). OEQC will maintain the recording of the oral comments on its website, as it does for EAs and EISs. The Final Proposed Rules are clear that oral comments do not need to be responded to – only that a summary be provided in the draft EIS. The OEQC can also offer more guidance.
Leo Asuncion, Office of Planning	Purpose	Introduce the acronyms "EA" and "EIS" in paragraph a: 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.	§ 11.200.1-1(a)	The Council adopted the recommendation.
	Purpose	Wanting more straightforward language and positive sentiment, suggests removing: [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.	§ 11.200.1-1(b)	This language in this section is from the 1996 Rules that was originally in the EIS subchapter of the rules. The Council believes this language is important to retain and that these considerations apply throughout the environmental review process. Accordingly, the language was intentionally moved to the purpose section. In response to comments received on the Final Proposed Rules, the Council revised this section to move the language from subsection (b) to be the lead in to subsection (c).
	Accepting Authority	Suggests amendment to the definition of "accepting authority" : "Accepting authority" means the [final] [official who] governor or the mayor, or their authorized representatives, 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.	§ 11-200.1-2	The Council revised this section to clarify that in the case of agencies, the state or county agency makes the determination that an EIS is required and that respective agency's political leader (governor or mayor) is the accepting authority for the EIS. In the case of applicants, the approving agency makes the decision that an EIS is required and also serves as the accepting authority.
	Definitions	Suggests amending the definition of "EIS preparation notice" : "EIS preparation notice[,]", [or] "EISPN", or "preparation notice" means a determination [based on an environmental assessment that the subject] based on an EA or approving agency's determination that 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.	§ 11-200.1-2	The Council believes that the language as drafted states the two situations: (1) when, after an EA is prepared, the approving agency determines that an EIS is required, or (2) when an agency determines that a proposed action may have a significant effect based on its judgment and experience, which is language used in Chapter 343, HRS, authorizing an agency or applicant to proceed directly to preparing an EIS without first preparing an EA. The Council wanted to reflect this statutory language in the definition.

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions	Suggests amending the definition of "Discretionary consent" by also including the definition of "discretionary consent" found in § 343-5.5, HRS which references public hearing as a distinguishing factor, as some judgment and free will is called for in almost all permit decisions: "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. Discretionary consent involves an approval from a decision-making authority in an agency that is subject to a public hearing. 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.	§ 11-200.1-2	The OP recommendation is contrary to the definition of "discretionary consent" as used in Section 343-2, HRS, and narrows the statute's contemplation of what is considered discretionary. The definition OP uses is also in Section 343-5.5, HRS, but that definition applies only for that subsection, and not across the entire statute.
	Definitions	Suggests the definition of "program" could be interpreted too broadly and could encompass many agency plans not currently subject to environmental reviews. Recommends, at minimum, excluding agency capital improvement program and transportation improvement program plans linked to agency budgetary processes. Projects mentioned in these plans will subsequently undergo environmental review when their scope is more clearly defined. It may also be worthwhile to directly link "program" to "programmatic EA or EIS " to clarify the reference in the definition.	§ 11-200.1-2	Chapter 343, HRS, requires undertaking environmental review at the earliest practicable time for projects and programs. The current standing law defining a "program" is in <i>Umberger v. DLNR</i> , 403 P.3d 277 (2017), which defines it as "a plan or system under which action may be taken toward a goal". The decision also emphasized the broad ambit of environmental review. The Council's proposed language seeks to make the definition of "program" more operable while acknowledging the decision and intent of the State Supreme Court. While the Final Proposed Rules do not use the term "programmatic", the 1996 Rules and the Final Proposed Rules allow for programmatic EAs and EISs, which are EAs and EISs for programs.
	Definitions	Suggests amending the definition of "trigger" : "Trigger" means any use or activity listed in section 343-5(a), HRS, requiring preparation of an [environmental assessment] EA.	§ 11-200.1-2	The Council amended the definition of "trigger" from referencing an EA to referencing environmental review, as an action may have a trigger but then receive an exemption or be required to do an EIS based on the agency's judgment and experience.
	Computation of Time	The first sentence is not clear and is hard to understand. Suggests referring to the language from HRS 1-29 Computation of time for amendments.	§ 11-200.1-3	The Council adopted the recommendation.
	Identification of Approving Agency or Accepting Authority	Suggests amendment as follows: If 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 the authority as to determine whether to accept the EIS.	§ 11-200.1-7(a)	In response to comments on this section, the Council has revised this section of the rules to clarify that if an agency action involves state lands or funds or a mix of state lands or funds, the governor or his or her authorized representative shall be the accepting authority, but if an agency action involves only county lands or funds, the mayor or his or her authorized representative is the accepting authority.
	Identification of Approving Agency or Accepting Authority	Suggests: The office shall not serve as the accepting authority for any [proposed] agency or applicant action.	§ 11-200.1-7(e)	The Council adopted the recommendation.
	Applicability of Chapter 343, HRS, to Agency Action; applicability to agricultural tourism	Suggests subsection (3) should be deleted because it is unlikely that any agency will be conducting a project of this specific nature; unless someone is trying to use public tourism funds for agricultural tourism-related activities/programs. But any agency action is likely to trigger an environmental review by the primary triggers of public funds or lands.	§ 11-200.1-8	The Council adopted the recommendation.

Name	General Topic	Specific Comment	Rules Section	Response
	Applicability of Chapter 343, HRS, Agency Actions; emergency actions	Emergency actions undertaken by a proposing agency during a governor-declared state of emergency may face unforeseen delays due to issues such as: obtaining financing and adhering to procurement law, which may not allow for an activity to have "substantially commenced" within sixty days of the emergency proclamation. OEQC and the Environmental Council should evaluate if the 60-day limit for project commencement is feasible for these types of agency actions.	§ 11-200.1-8	The Council considered comments on this topic. The language of the Final Proposed Rules complies with Section 127A-14(d), HRS, which provides that "[a] state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first." The Governor has authority to reauthorize emergency proclamations, under which the emergency action would continue. Environmental review is otherwise necessary, as applicable, for actions outside of an emergency declaration period.
	Applicability of Chapter 343, HRS, to Agency Actions; applicability to agricultural tourism	Suggests: 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] are subject to environmental review [only] when the respective county [required under] requires an environmental review under an ordinance adopted pursuant to section 205-5(b), HRS.	§ 11-200.1-8	The Council adopted the recommendation.
	Determination of Significance; Consideration of Previous Determinations and Accepted Statements	Suggests moving § 11-200.1-12 Consideration of Previous Determinations and Accepted Statements to § 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, and deleting § 11-200.1-11(c), which is not an appropriate content under § 11-200.1-11. Except for EISPN, it is not necessary for an agency to submit a written determination explaining its rationale to the OEQC for public notice when the agency determines that a proposed activity warrants an environmental review.	§ 11-200.1-12 / § 11-200.1-11	Section 11-200.1-11 is for examining whether a prior EA or EIS covers a proposed action. The language in section 11-200.1-12 is for agencies to incorporate by reference material from existing documents into an action that is not covered by a prior determination. For subsection (c), the language is "may" not "shall" as the Council finds it appropriate to promote this as a means to improve public notification. It is up to the agency to decide whether the agency wishes to publish with the OEQC. In response to comments regarding the use of "activity" in this section, the Council revised all uses of "activity" to "action". Also in response to comments, the Council adopted the deletion of subsection (c) in section 12 and instead moved that language to subsection (a) of section 11.
	Consideration of Previous Determinations and Accepted Statements	Please see page 4-17 of the Hawaii Administrative Rules Drafting Manual, Third Edition § 00-4-10 Examples for appropriate formatting. Suggests: (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).	§ 11-200.1-12	Formatting will be addressed in the final version and receive review by the Attorney General and Legislative Reference Bureau. In response to comments, the Council deleted the word "programmatic" from this section and replaced it with "program" as programmatic is not defined. While the Final Proposed Rules do not use the term "programmatic", the 1996 rules and the Final Proposed Rules allow for programmatic EAs and EISs, which are EAs and EISs for programs.

Name	General Topic	Specific Comment	Rules Section	Response
	Use of Prior Determinations	Please see page 4-17 of the Hawaii Administrative Rules Drafting Manual, Third Edition § 00-4-10 Examples for appropriate formatting. Suggests: (b) (c) When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed activity, the agency [may] shall submit a brief written determination explaining its 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 determination explaining its rationale to the office for publication pursuant to section 11 200.1 4 and the agency shall proceed to comply with subchapter 7.	§ 11-200.1-11	Formatting will be addressed in the final version and receive review by the Attorney General and Legislative Reference Bureau.
	Definitions	Suggests adding the definition of "sea level rise exposure area"	§ 11-200.1-2	The Council considered this comment and while this is a new technical term, other technical terms used in conjunction with this are not defined, such as tsunami zone or flood plain. The Council therefore proposes no definition of this term.
	Use of Prior Determinations	Office of Planning supports the proposed addition to Subchapter 6, § 11-200.1-11. This has potential applicability for affordable housing developments which may benefit from this amendment/addition.	§ 11-200.1-11	Acknowledged.
	General Types of Actions Eligible for Exemption	Office of Planning supports the proposed amendments to Subchapter 8 - Exempt Actions, Lists, and Notice Requirements. Specifically, amendments to § 11-200.1-15(c)(6), § 11-20.1-15(c)(9), and the addition of § 11-200.1-15(c)(10).	§ 11-200.1-15(c)(6), § 11-20.1-15(c)(9), § 11-200.1-15(c)(10)	The Council thanks the Office of Planning for the support. The Council adopted revisions to the Final Proposed Rules in section 11-200.1-15(c)(6) regarding demolition of structures to address issues and complications raised by other commenters.
	Preparation and Contents of a Draft EA	Suggests deleting first sentence of (b) because this description will not provide a meaningful way to direct the preparation of a draft EA.	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (b), but ultimately decided that the language was important as it highlights the difference and directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.
	Preparation and Contents of a Draft EA	Suggests deleting first sentence of (c) because this description will not provide a meaningful way to direct the preparation of a draft EA.	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (b), but ultimately decided that the language was important to direct the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately
	Preparation and Contents of a Draft EA	Suggests amending item (9) by replacing "FONSI" with "determination" agency or approving agency [determination or, for draft environmental assessments only an] anticipated determination, such as FONSI, if applicable, (including) and the findings and reasons supporting the anticipated [FONSI] determination [, if applicable]; and	§ 11-200.1-18	The Council voted to retain the language in the Final Proposed Rules. The use of "determination" in this instance is in its generic form. A draft EA is only done when anticipating a FONSI, as expressed in Section 343-5, HRS, so that is the appropriate term (in contrast, a final EA could result in a FONSI or a determination that an EISPN is necessary).
	Notice of Determination for Draft EAs	Pages 26-27, under § 11-200.1-19 Notice of Determination for Draft Environmental Assessments, except under § 11-200.1-19(a), all terms referencing "FONSI" should be changed to "determination". Otherwise, a draft EA will direct exclusively to the determination of "FONSI" without "EISPN" for a final EA, which conflicts with § 11-200.1-22 Notice of Determination for Final Environmental Assessments.	§ 11-200.1-19	The Council voted to retain the language in the Final Proposed Rules. The use of "determination" in this instance is in its generic form. A draft EA is only done when anticipating a FONSI, as expressed in Section 343-5, HRS, so that is the appropriate term (in contrast, a final EA could result in a FONSI or a determination that an EISPN is necessary).
	Notice of Determination for Final EAs	For the notice of a FONSI that will not be proceeded further to a EIS, suggests deleting the term "accepting authority" from (e)(2) as follows: (2) Identification of the approving agency [or accepting authority];	§ 11-200.1-22	The Council adopted the recommendation.
	Consultation Prior to Filing a Draft EIS	Page 32, suggest changing the subjective term "With good cause" to an objective term "With explanations".	§ 11-200.1-23(c)	The Council adopted the recommendation.

Name	General Topic	Specific Comment	Rules Section	Response
	Preparation and Contents of a Draft EA	Suggest deleting the first sentence (b) to eliminate descriptions that will not provide a meaningful way to direct the preparation of a draft EIS.	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (b), but ultimately decided that the language was important as it highlights the difference and directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.
	Preparation and Contents of a Draft EA	Suggest deleting the first sentence of (c) to eliminate descriptions that will not provide a meaningful way to direct the preparation of a draft EIS.	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (c), but ultimately decided that the language was important to direct the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately
	Content Requirements; Draft EIS	Suggests amending: (6) Summary technical data, diagrams, and other information necessary to [permit] [enable] allow an evaluation of potential environmental impact by commenting agencies and the public; and	§ 11-200.1-24 (g)(6)	The Council considered this comment but retained the originally proposed language.
	Content Requirements; Draft EIS	Suggests: "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" into "For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of discuss the reasons for not studying why those alternatives were not studied in detail.	§ 11-200.1-24 (h)	While the Council did not adopt the edits suggested by this comment, the Council voted to approve additional revisions to this section. Items (1) and (4) of the Proposed Rules did not appear to be examples that could obtain the objectives of the action. The no action alternative is the bedrock of impact analysis. The Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508) for implementing the National Environmental Policy Act of 1969 (NEPA) state that NEPA analyses shall "include the alternative of no action" (40 CFR 1502.14). The no action alternative is something that should always be in an EA or EIS as it is an analysis of the current situation and how it is projected to continue. As such, it was moved to the beginning of subsection (h).
	Content Requirements; Draft EIS	Suggests the rules should provide a definition for "natural or cultural resources" as written in the amended text "natural or cultural resources plans, policies, and controls for the affected area" or provide clarification of the subject term.	§ 11-200.1-24 (j)	The Council has declined to define these terms as doing so may run the danger of being under inclusive in some situations over inclusive in others. Furthermore, the Council believes that natural resources is self-explanatory.
	Content Requirements; Draft EIS	Office of Planning supports the proposed amendments to § 11-200.1-24(0) and § 11-200.1-24(p).	§ 11-200.1-24	Acknowledged.
	Content Requirements; Final EIS	Suggest changing § 11-200.1-27 (b)(3) to read as follows: (3) A list of persons, organizations, and public agencies who were consulted with in preparing the final EIS and those who had no comments shall be included in a manner indicating that no comment was provided;	§ 11-200.1-27 (b)(3)	The Council adopted the recommendation.
	Content Requirements; Final EIS	Suggest amending the subsection (4), to add reference to cultural impacts to read as follows: 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, including cultural impacts, 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, title 41 United States Code section 7609."	§ 11-200.1-31(4)	The Council adopted OP's recommendation.
Randy Cabral, Hawaii Farm Bureau	Applicability of Chapter 343 to Applicant Actions	Wastewater systems as it applies to ag operations	§ 11-200-9(a)(2)(B)	The Council chose to not define the triggers separate from their use and definition in Chapter 343, HRS, as the Legislature has a propensity to amend the triggers, which would make the Final Proposed Rules inconsistent.
Livit Callentine	Content Requirements; Draft EIS	Appreciate expanded guidance on alternatives. Concern for use of word "reasonable." Suggests adding language from NEPA 40 CFR 1502.14(a): "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."	§ 11-200.1-24(h)	The Council decided not to adopt the NEPA language proposed by this comment. The 1996 Rules use very similar language which the Council has retained for the Final Proposed Rules.

Name	General Topic	Specific Comment	Rules Section	Response
Karlynn Fukuda, Munekiyo Hiraga	General Types of Actions Eligible for Exemption	1. Section (c)(6) notes that "Demolition of structures, except those structures that are listed on or that meets the criteria for listing on the national register or Hawaii Register of Historic Places" would qualify for an exemption determination. We aren't sure at what point an applicant would be made aware that their property/structure would "meet the criteria of listing on the national register or Hawaii Register of Historic Places" and would therefore need to prepare a Chapter 343 Hawai'i Revised Statutes review document. We offer this comment for the EC's consideration.	§ 11-200.1-15	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
Bridget Hammerquist, Friends of Mahaulepu	General; Amend vs. Repeal and Replace	Repealing Chapter 200 and replacing with Chapter 200.1 will increase difficulty of tracking amendments, interpreting case law and applying these rules. Integrating amendments to Chapter 200 instead of repealing avoids this.	n/a	The Council recognizes that there will be an adjustment period for the new rules, however, the current rules are disorganized and the Final Proposed Rules will better reflect the process. Given the number and nature of the revisions, integrating them into Chapter 200 would be more difficult to follow than the repeal and promulgate that the Council is pursuing. The Council has taken extra effort and spent considerable time to identify old and new sections as well as tracking all changes throughout the rules amendment process by creating (1) the rules rationale document, explaining the regulatory history of the amendments to the rules, and (2) the unofficial Ramseyer document, which tracks all amendments made against the 1996 Rules. The Council encourages all practitioners to use the unofficial Ramseyer document in conjunction with the final promulgated rules throughout the adjustment period.
	Significance Criteria	Revise Section 11-200.1-13(b) for finding significant impacts to align with 343-5 and more recent case law. More recent case law (Unite Here!, 2010) offers another and better standard of "may have a significant effect".	§ 11-200.1-13(b)	The Council adopted the recommendation.
	Definitions	As defined, action includes a potential loophole for programs or projects that have previously escaped review and are ongoing. Proposes amendments.  Definition of project is overly restrictive, but program is helpful. Proposes amendments.	§ 11.200.1-2	The term "action" is defined in Section 343-2, HRS. Based on comments received, the Council adopted additional edits to the definition of "project" to align it with recent case law (2017).
	Definitions	A definition of mitigation is needed. NEPA and CEQA have one.	§ 11.200.1-2	The Council has declined to define "mitigation" at this time. The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The Council recognizes that what is appropriate mitigation for specific actions will be determined on a case-by-case basis.
	Use of Prior Exemptions, FONSI, or EISs	Should follow public notice process and account for cumulative impacts based on the additionally of the proposed action to the prior determination	§ 11.200.1-11	The concept of additionally would point to the need for additional environmental review. The purpose of this section is to provide direction to agencies when the difference is negligible to none, including cumulative impacts, such that it is a component or aspect of what was covered in the prior determination. For example, building, rerouting, or extending a fence for a watershed. A watershed restoration plan that underwent an EA and received a FONSI may contemplate a number of components. Deviations on these components would still be covered, unless the deviation caused there to be direct, indirect, or cumulative impacts not contemplated in the prior FONSI, in which case the agency would make a determination that an exemption, EA, or EIS would be appropriate to the potential for significant impact of that deviation. The Council therefore did not adopt edits based on the additionally concept, however, other edits have been adopted for this section.
	General Types of Actions Eligible for Exemption	The rules should not allow for non-conforming/grandfathered structures to be exempted for replacement or reconstruction of existing facilities and this exemption should be deleted in section 15(c)(2). Section 15(d) should be amended to apply to actions that may be significant, not just to those that are significant.	§ 11.200.1-15(c)(2)	The Council recognizes the concerns raised by this comment but has not proposed to delete this exemption in section 15(c)(2) or add any additional language to address this. These concerns are addressed by the Final Proposed Rules and existing law. Section 11-200.1-15(d) is the catch-all provision that states that exemptions are inapplicable to particularly sensitive environments or where an impact may be significant. Whether or not a structure is non-conforming is considered in determining the overall environment. Additionally, structures that are non-conforming cannot be replaced under existing law.
	General Types of Actions Eligible for Exemption	Exemptions should not apply if an action "may have significant impacts" instead of the standard in 15(d) which says "is significant".	§ 11.200.1-15(d)	The Council chose to retain the standard in the 1996 Rules and in the Final Proposed Rules for considering an exemption is whether it "will individually and cumulatively probably have minimal or no significant effects" and 15(d) provides that if it will have significant effect then the exemption cannot be applied to the action.
	Content Requirements; Draft EIS; Mitigation Measures	Proposed section provides important guidance on mitigation, but should further include a requirement that the agency or applicant consult with an expert scholar or specialized agency on the likelihood that the mitigation will work as proposed.	§ 11-200.1-24(p)	The EIS process calls for consultation. Not every mitigation measure requires an expert scholar or specialized agency to opine on the effectiveness of the proposed mitigation. Agencies and applicants are well-advised to get the best expert advice they can on their proposed actions, but it is ultimately at the discretion of the agencies and applicants to decide what they believe is the appropriate level of review for the action proposed. The Council therefore did not adopt edits based on the additionally concept, however, other edits have been adopted for this section.

Name	General Topic	Specific Comment	Rules Section	Response
	Content Requirements; Draft EIS; Comment Formatting/Batch Comments	Comments reproduced in environmental disclosure documents should be readable.	§ 11-200.1.24	The Council agrees that disclosure documents should be readable. The Council recognizes that court rules impose certain font size specifications for pleadings. The Council recognizes that technology is changing at a rapid pace and the effort to amend rules, so instead of imposing strict font requirements in the rules, the Council has asked OEQC to address font size and formatting (including the number of comment letters per page) through guidance.
		There should be substantive responses required for each issue raised in batched comments. Suggests multiple amendments to dealing with batched comments: The multitudinous of batched comments means that each topic raised, and particularly where a raised topic was further elaborated on in the comment, should meet with a substantive response that fully addresses each fact and issue raised. At minimum, we suggest amendments to §11-200.1-20(e)		Some of the major revisions to the Final Proposed Rules involve guidance on providing responses to comments received during public review periods. The Council believes the language in the Final Proposed Rules already covers the requested amendments. The Council has asked OEQC to prepare guidance on responses after adoption of the Final Proposed Rules. The new response requirements regarding batched comments are included to address abuses of the comment process. Revised language aligns with language in section 11-200.1-26 that changes the requirement to respond to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed. This process is consistent with the batched comment response provided for in NEPA.
	Supplemental EISs	Supplemental EIS rules should provide for changed circumstances and new information warranting review.	§ 11-200.1-30	The existing SEIS rule and case law do address changed circumstances and new information warranting additional review. In multiple earlier drafts, the Council proposed edits to the supplemental EIS section, however, in response to multiple comments opposing the edits to this section, the Council has declined to make any substantive edits. In the Final Proposed Rules, the Council introduced the "Green Sheet" concept in section 11-200.1-11, which facilitates not only considering whether an action is covered by previous environmental review documents, but also what, if any, review might need to be done. The Green Sheet allows all factors, including a change in the project or anticipated impacts, leaning toward or against additional review, to be considered and tracked through a formal, internal process.
	Substantial Commencement/ 5-Year Review	Five-year review should be required where the action has not substantially commenced.	§ 11-200-27 (v.0.2)	Hawaii law is clear that time alone does not trigger a supplemental EIS or further environmental review. The Council did not include language that "voided" an EIS. Rather, the Council introduced the NEPA concept of a 5-year re-evaluation period for EISs, to which stakeholders for and against the proposal read that as an automatic "shelf life" of the EIS where a supplemental EIS would automatically be required after 5 years. The Council did not propose an automatic shelf life of any period because the Chapter 343, HRS, process is based on impacts not arbitrary time limits, so the Council withdrew the re-evaluation concept from subsequent revisions in order to refine it. The 5-year re-evaluation period was therefore deleted and instead, the Council introduced the Green Sheet concept set forth in 11-200.1-11.
	Response to Comments	Increase agency and applicant oversight and the public's confidence in the environmental review process.  Suggests OEQC review EAs and EISs to ensure sufficient responses to comments.  Also suggests approving agency for applicant prepared EAs and EISs be subject to the agency's own review and analysis. Wants greater agency oversight over applicant-prepared documents.	§ 11-200.1-7(e), § 11-200.1-24, § 11-200.1-26, § 11-200.1-27	The Council believes that the major revisions in the Final Proposed Rules will increase the public's confidence in the environmental review process. Based on comments received on the Final Proposed Rules, the Council has proposed additional revisions to these sections for clarity and consistency. Revisions include the Council's guidance, through the rationale document and meeting minutes, as well as the contemplated future guidance to be drafted by OEQC, on providing responses to comments received during public review periods. Because agencies are the entities that are the objects of judicial appeal, whether it is an agency action or applicant action, it is in the agencies' interests to ensure that the information in environmental review documents is accurate and complete. Further, the Final Proposed Rules direct agencies to make their own determination of the applicant prepared document. While an agency may ask OEQC for its opinion on EAs and EISs, OEQC is not required to review all documents. That is the task for the approving agency or accepting authority. Furthermore, the recommendations regarding OEQC are already possible and the larger constraint is on staffing and budget for the OEQC, which is a legislative matter.
	Response to Comments	Wants consideration of comments in preparing substantive responses.	§ 11-200.-20, 11-200.1-23, § 11-200.1-24, 11-200.1-26, 11-200.1-27	The Council agrees that responses should consider the comments made. While the Final Proposed Rules require that responses be made to substantive comments, the Final Proposed Rules do not explicitly require that responses be point-by-point as suggested by this comment. The comment response should be in proportion to and of the nature of the comment. Some of the major revisions to the administrative rules involve guidance on providing responses to comments received during public review periods. The Council has also requested the OEQC to prepare further guidance for responses.
	Timing of EA Preparation	Retain 11-200-5(a) to prepare an EA at the earliest practicable time to determine whether an EIS shall be required for potential impacts of its actions, including overall, cumulative impact in light of related actions in the region and further actions contemplated.	§ 11-200-5(a) (version 0.2), 11-200.1-18(a)	The Council included the phrase "earliest practicable time" in section 11-200.1-1 to make the point that this should apply throughout the process. The Council regards the language about cumulative impacts as not more specific, but redundant; the definition of impact contains cumulative impact, which in turn is defined as including past, present, and reasonably foreseeable actions.

Name	General Topic	Specific Comment	Rules Section	Response
Jordan Hart, Chris Hart & Partners	Content Requirements; Draft EIS; Cumulative Impacts	OEQC, the accepting authority or the approving agency should be required to provide specific guidance on the necessary analysis of cumulative impacts; e.g., which projects need to be analyzed (because the agency believes they are anticipated to occur); OR – a threshold should be established to allow determination of whether uninitiated actions are sufficiently likely to occur that they require analysis	§ 11-200.1-24(i)	The Council acknowledges that this is a difficult and controversial part of analysis. The complexity of factors involved in each individual EA or EIS is too great to have a formula and the Council has declined to set a threshold. This decision recognizes the complexities and uniqueness of each action. This is also consistent with Hawaii case law, which analyzes the sufficiency of an environmental review document under the rule of reason. This allows agencies and applicants to assess what is appropriate under the specific circumstances. NEPA guidance from the U.S. Environmental Protection Agency on assessing cumulative impacts is helpful and provides something of a precedent.
	General Types of Actions Eligible for Exemption; Affordable Housing	The need (or lack of need) for Compliance with general and or community plans should also be addressed.	§ 11-200.1-15(c)(10)	The intent of this section was not to specify this in order to allow flexibility. This does not necessarily imply that a General Plan amendment might not be needed – just that an EA might not be needed.
	General Types of Actions Eligible for Exemption; Affordable Housing	In the context of "residential" does the scale/ density need to be equal to the specific zone or community plan designation? Should that be stated or is it already implied?	§ 11-200.1-15(c) (10)	The project level details and specific requirements for scale/density, etc., will be addressed by the requirements of the applicable agencies. Thus, no such details are provided for in these rules.
	Exemption Notices	Rules should require more detail in listing and publication of exemption notices, including a reasonably detailed scope description with diagrams (i.e. 1-2 pages of text, 1-2 pages of diagrams of the proposed action), hosted on OEQC site.	§ 11-200.1-17	The Council removed the requirement to publish exemption notices for agencies with exemption lists more than 7 years older than the last Council concurrence. The Final Proposed Rules retain the requirement for agencies to publish a list of exemption notices issued on a monthly basis in the bulletin. OEQC will consider how to provide more details on the format for publication of such lists of exemption notices. Should a member of the public want to see the actual exemption notice, the request must be made directly to the agency and the agency provide the exemption notice electronically to the requester.
Kamakana Kaimuloa, Chamber of Commerce Hawaii	Purpose	Reword: "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." [too aspirational and hard to fulfill] "Make efforts to 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."	§ 11-200-1.1(c) (3)	The Council considered comments related to this section and reworded it to require the agencies and applicants to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language.
	Definitions; EA	Replace the word "evidence" with "facts" in the new definition of EA as a written evaluation "that serves to provide sufficient evidence and analysis"	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: 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, if such oral comments are made.	§ 11-200.1-23(d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.

Name	General Topic	Specific Comment	Rules Section	Response
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an "analysis" of impacts and alternatives considered instead of an "identification and summary" of those impacts and alternatives. An "analysis" requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	The Council believes that the new language does not impose any greater requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language makes this explicit and clearer.
	Content Requirements; Draft EIS	"reasonably foreseeable" consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: "the reasonably foreseeable environmental consequences"	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and both Hawaii and NEPA case law.
Sam Lemmo, Office of Conservation and Coastal Lands (OCCL), DLNR	Content Requirements of Draft EAs and EISs; Sea Level Rise	Add to 11-200.1-18(d) a new paragraph (11) "Discussion of vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-18(d)	The Council considered this comment and decided that edits were more appropriate to existing subsection (6) of section 11-200.1-18. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change or other impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.
	Draft EA Contents; Sea Level Rise	Amend 11-200.1-18(d)(6) to include "State sea level rise exposure maps".	§ 11-200.1-18	The Council agrees that it makes sense to add as the sea level rise exposure maps to include along with other maps to show the affected environment for this subsection as well as for section 11-200.1-24(g) and corresponding sections.
	Draft EIS Contents; Sea Level Rise	Add to 11-200.1-24 a new paragraph that states: "The draft EIS shall contain a separate and distinct section that provides State sea level rise exposure maps and discusses vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-24	The Council agrees that it makes sense to add as the sea level rise exposure maps to include along with other maps to show the affected environment in section 11-200.1-24(g). A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change or other impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.
Jennifer Lim, Carlsmith Ball	Purpose	Notes that there is a significant difference in the timing of the planning process and decision-making process. Suggests taking out that phrase and leaving "earliest practicable time," which aligns with HRS 343-5(e).	§ 11-200.1-1(b)	The Council adopted the recommendation.
	Purpose	Suggests taking out language referring to consultation in good faith.	§ 11-200.1-1(c)(3)	The Council considered comments to edit this section and to remove the "good faith" language but decided that language is important for purposes of framing the disclosure nature of Chapter 343, HRS, and these rules. The Council intends this section 1 as aspirational language.
	Definitions	Suggests replacing "definitions" with "consultation and content".	§ 11-200.1-2	While the Council did not adopt the suggested edit, the Council recognized that the use of the term "definitions" in the definition of "acceptance" is somewhat unclear and therefore deleted its use from this section. Other edits were also made to this section for clarity.
	Definitions	Suggests changes to "accepting authority" definition to align with changes proposed in "acceptance" definition.	§ 11-200.1-2	Edits to the definition of "accepting authority" have been made in response to this comment.
	Definitions	Questions whether "addendum" definition should also mention "accepting authority."	§ 11-200.1-2	The Council adopted the recommendation.
	Definitions	In EA definition, questions whether we should have information instead of evidence.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	Definitions	Def of FONSI: suggests changing "will not" to "is not likely to"	§ 11-200.1-2	The Council has made a policy decision to keep statutory language as much as possible. The existing wording for this definition is from Section 343-2, HRS, and has thus been retained.

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions	The rules should make clear what is meant by mitigation measures, and include a definition. Suggests NEPA and CEQA language	§ 11-200.1-2	The Council has declined to definite "mitigation" at this time. The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The Council recognizes that what is appropriate mitigation for specific actions will be determined on a case by case basis.
	Definitions	Suggests revising "project" definition to align more closely with Umberger, specifically that some projects may not have beginning and end points	§ 11-200.1-2	In response to comments on this definition, the Council revised and further refined the definition of "project" in line with the Umberger v. DLNR, 403 P.3d 277 (2017).
	Definitions	Suggests "significant effect" definition should more closely track the significance criteria in 1-13	§ 11-200.1-2	The existing language is mostly from section 343-2, HRS. The Council acknowledges that there is a discrepancy between the language of the existing rules and statutory definitions with the significance criteria language in section 11-200.1-13(b)(4) with respect to the phrase "community or State". The Final Proposed Rules have tried to align that language.
	Definitions	Suggests a simplified definition, arguing that the details of when a SEIS is required should be left to 11-200.1-20.	§ 11-200.1-2	In response to several comments opposing proposed edits to the supplemental EIS sections, the Council decided to not to propose amendments to those section except for grammatical and housekeeping changes.
	Periodic Bulletin	Suggests replacing "proposed activity" with "proposed action" to avoid ambiguity.	§ 11-200.1-4	The Council considered this comment and in Section 11-200.1-11, had intended to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program subject to Chapter 343, HRS. The Council recognized that "activities" may be outside the scope of the Council's authority as Chapter 343, HRS, is about actions and authorizes the Council to make rules about implementing Chapter 343, HRS. The Council therefore revised section 11-200.1-4 and section -11 to change all instances of "activity" to "action".
	Filing and Publication in the Periodic Bulletin and Withdrawal	Adds "issue date deadline" for clarification.	§ 11-200.1-5	The Council adopted the recommendation.
	Filing and Publication in the Periodic Bulletin and Withdrawal	Suggests several revisions to include stated affirmative obligations rather than possible requirements for those submitting materials to OEQC for publication in the bulletin.	§ 11-200.1-5	The Council recognizes that OEQC filing requirements rely on a form so filers should know in advance what is required, however, there are unique situations that sometimes require OEQC to make filer-specific decisions on what information to include.
	Filing and Publication in the Periodic Bulletin and Withdrawal	Asking whether requiring the proposing agency or applicant to sign and date draft/final EIS is to preclude a consultant from doing so	§ 11-200.1-5	The Council's intent for this is that the proposing agency or applicant acknowledges responsibility for the document, especially when using a consultant or different preparer.
	Filing and Publication in the Periodic Bulletin and Withdrawal	Suggests clarifying whether previously published draft EA/EISs need to be withdrawn in order to publish a second draft EA/EIS.	§ 11-200.1-5	The existing rules provide for withdrawing a determination in the case of an EA (i.e., a FONSI or EISPN) but a document in the case of an EIS. The Final Proposed Rules seek to provide for withdrawing EA documents and EIS determinations. In the Final Proposed Rules, no changes to the project means it is a republication while a change means it is a "second draft" etc. Withdrawal means that the obligation to respond to comments goes away. Further clarification may be needed on how to address republication when there is a change in a project versus no change in a project and how that relates to commenting. The Council has asked OEQC to clarify this concept through guidance.
	Filing and Publication in the Periodic Bulletin and Withdrawal	"Although I assume the term "consultant" is intended to mean the EA or EIS preparer, that is not defined anywhere."	§ 11-200.1-5(b)	The Council recognizes that the term "consultant" is commonly used in practice as a synonym for "preparer".
	Filing and Publication in the Periodic Bulletin and Withdrawal	Concerned about the idea that the summary has to convey the full impact	§ 11-200.1-5(b)	This is existing language and OEQC and the Council are not aware of any problems caused by the existing requirements. However, the Council recognizes that a revision would be more accurate as providing a "full" summary is difficult in the limited space provided in the periodic bulletin and has therefore deleted the word "full" as used before "impact". The intent of the language is to reduce the potential for the description to be purely self-promotional as OEQC does not editorialize the project description.
	Identification of Approving Agency and Accepting Authority	Is concerned this language may be problematic for applicant actions	§ 11-200.1-7(c)	The language of the Final Proposed Rules includes an "if" so it does not mandate the agencies to consult if they have made a decision on which agency will be the accepting authority/approving agency. Consultation is required only if the agencies do not agree. The Council has asked OEQC to clarify this through guidance.
	Applicability of chapter 343, HRS, to Agency Actions	Suggests taking out last sentence of subsection because it may create confusion ("maybe" have a significant impact will require an EIS anyways)	§ 11-200.1-8(2)	The Council recognizes the confusing created by this existing language. It is also in some ways a restatement of the environmental review process. The subsection has been revised to delete the last sentence.
	Multiple or Phased Actions	Suggests replacing "undertaking" with "program"	§ 11-200.1-10(1)	The Council adopted the recommendation.

Name	General Topic	Specific Comment	Rules Section	Response
	Use of Prior Determinations	Suggests changing every instance of the term "proposed activity" to "proposed action"	§ 11-200.1-11	The Council had intended to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program subject to Chapter 343, HRS. The Council recognized that "activities" may be outside the scope of the Council's authority as Chapter 343, HRS, is about actions and authorizes the Council to make rules about implementing Chapter 343, HRS. The Council therefore revised section 11-200.1-4 and section -11 to change all instances of "activity" to "action".
	Consideration of Previous Determinations and Accepted Statements	Suggests making clear that you can incorporate info from previous determinations "by reference" Suggests using term "program EIS" instead of "programmatic EIS" (in section 1-11 too)	§ 11-200.1-12	The Council has asked OEQC to clarify incorporating by reference previous documents. The Council agrees that this is explicitly allowed under the Final Proposed Rules so long as the reference is to a publicly available document. Formal publications are preferred. If a referenced document is not publicly available or is difficult to obtain, a copy should be included as an appendix to the environmental review document. The main point is to make sure the information is accessible. Citations to other documents should make clear the reason for citing the document or how it supports the stated proposition. Otherwise, more information may be needed. The Council adopted the recommendation to replace "programmatic" with "program".
	Significance Criteria	Suggests language to keep consistent with defined terms	§ 11-200.1-13(a)	The Council has adopted the proposed edits by this comment by deleting the qualifications used for "effects". The Council emphasizes that this deletion is not intended to make the language weaker, but to make clear that in all instances where "effects" or "impacts" are used, it includes direct, indirect/secondary, and cumulative effects/impacts.
	Significance Criteria	Suggests taking out those terms covered in definition of "effects"/"impacts" and adding proposed mitigation measures because they are taken into account	§ 11-200.1-13(b)	The Council adopted the recommendation.
	Significance Criteria	Suggests removing "historic" and "cultural" to stay under statutory authority of 343-2	§ 11-200.1-13(b)(1)	The Council acknowledges the comment but has declined to delete the references to historic and cultural resources in this section of the Final Proposed Rules. Chapter 344, HRS, which sets forth the State's environmental policy, includes this in the definitions: "'Environment' means the complex of physical and biological conditions that influence human well-being, including land, air, water, minerals, flora, fauna, energy, noise, and places of historic or aesthetic significance." The rules are for Chapter 343, HRS, but Chapter 344, HRS, was established alongside Chapter 343, HRS, and is analyzed in EAs and EISs. Chapter 343, HRS, does not define environment, but does utilize an abbreviated definition (that includes cultural) in its definition of EIS. Limiting EAs and EISs to historic sites already listed on the Register versus a "historic resources" in terms of impact analysis and significance would not be consistent with the intent and practice of environmental review. The State has statutes that deal with many things related to environmental quality but they still require examination in an EA or EIS where they are relevant to having potentially significant impacts.
	Significance Criteria	Change "or" to "and" to align with 343-2	§ 11-200.1-13(b)(4)	The Council adopted the recommendation.
	Significance Criteria	Proposes clarifying language	§ 11-200.1-13(b)(8)	While the Council did not adopt the specific edits suggested by this comment, the Council revised the language of section 13 in various places to address this comment as to subsection (b)(8) as well as the other subsections of (b)(1) through (b)(13) by adding "may" to the lead in sentence of (b).
	Significance Criteria	Because county and state plans change over time, suggests language to ensure analysis is based on final plan in effect at the time	11-200.1-13(b)(12)	The 1996 rules and Final Proposed Rules refer to proposed or approved plans in the draft EIS Contents section. The Council acknowledges that it would be very helpful for clarifying how to handle plans that were approved but never implemented or proposed but never finalized even after years. There are also plans undergoing updates at the same time as an EIS, and guidance on how to handle those concurrent processes would be helpful. The Council has therefore asked OEQC to clarify this through guidance. The Council declined to limit the Final Proposed Rules to approved and final plans as suggested by the comment in order to recognize that there may be situations where a plan is currently going through an update but not yet finalized. The Council also recognizes that there may be plans out there that are never finalized. The language of this rule is not meant to say that plans that are never finalized or otherwise abandoned should be followed.
	Determination of Level of Environmental Review	Same as above - about primary, secondary, etc. being included under term "impacts"	§ 11-200.1-14	The Council has adopted the proposed edits by this comment by deleting the qualifications used for "effects". The Council emphasizes that this deletion is not intended to make the language weaker, but to make clear that in all instances where "effects" or "impacts" are used, it includes direct, indirect, secondary, and cumulative effects/impacts.
	General Types of Actions Eligible for Exemption	Listed versus eligible for register	§ 11-200.1-15(c)(6)	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".

Name	General Topic	Specific Comment	Rules Section	Response
	General Types of Actions Eligible for Exemption	Requests clarification about conformance with state land use district	§ 11-200.1-15(c)(10)	The language is intended to mean that the action must be within the existing State Land Use Urban District and also in a county zoning district that allows for residential housing. The zoning language is meant to try to cover all four counties' different zoning ordinances. In terms of a sensitive area, the Council has revised this section to add a cross-reference to the significance criterion in section 13.
	Exemption Lists	Wants automatic approval in case EC cannot make quorum to consider	§ 11-200.1-16(d)	Council concurrence of an exemption list is not usually a matter of urgency, since the process has many steps, and an agency may always make a specific exemption for a particular action that falls within the general types in the rules. However, the language already addresses the concern of the Council not having quorum by providing for agencies to affirm their lists while there is no Council quorum.
	Preparation and Contents of a Draft EA	Requests clarification of "referenced" and "cost-benefit analyses"	§ 11-200.1-18(b)	The Council has asked OEQC to clarify incorporating by reference previous documents. The Council agrees that this is explicitly allowed under the Final Proposed Rules so long as the reference is to a publicly available document. Formal publications are preferred. If a referenced document is not publicly available or is difficult to obtain, a copy should be included as an appendix to the environmental review document. The main point is to make sure the information is accessible. Citations to other documents should make clear the reason for citing the document or how it supports the stated proposition. Otherwise, more information may be needed. Any referenced material used to justify a significance determination, FONSI, acceptance should be available to the public, either as an appendix or a stand alone report available online or some in some other format. The use the term cost-benefit analysis comes from the existing 1996 rules and has not been an issue to-date. In general, it means looking at the trade-offs, not necessarily an applicant business pro forma or business plan that would share proprietary business information. Any private report must be attached as an appendix to the document and made available to the public. Any proprietary information may be redacted.
	Preparation and Contents of a Draft EA	Change "all required permits" to all permits known at time of filing of document Wants clarification about whether identifying only one of the approvals will suffice	§ 11-200.1-18(d)(3)	The Council does not believe that the language proposed by the comment is necessary as the Council interprets the rule as implying only those permits known to be required. The environmental review process is flexible and allows for changes in disclosure of the required permits as the action moves from draft to final due to changes in design or impact assessment. The Council recognizes that final design may avoid some permits, or ultimately require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review. The Council has asked OEQC to address this concept and rationale through guidance.
	Notice of Determination for Draft EAs	Suggest taking out "when applicable"	§ 11-200.1-19(b)	The Council adopted the recommendation. The Council also replaced the word "determination" with "FONSI" because this paragraph only speaks about what to do with a draft EA.
	Public Review and Response Requirements for Draft EAs	Suggests comments not sent to both approving agency and applicant can be ignored	§ 11-200.1-20(b)	The intent of the rule is that so long as either the agency or applicant receives the comment, the comment must be responded to. Making the commenter send to both the agency and applicant and disqualifying the commenter from standing because the comment was received by only one or the other is too much of a process burden on the commenter. It is common in practice that comment letters are only sent to one entity. The burden is on the agency and applicant to ensure that it has all written comments sent to either the agency or applicant.
	Public Review and Response Requirements for Draft EAs	Suggests changing document to "EA"	§ 11-200.1-20(d)	The Council adopted the recommendation.
	Public Review and Response Requirements for Draft EAs	Suggests "address" instead of "resolve" Suggests taking out last clause so that the applicant doesn't have to argue its case to commenters	§ 11-200.1-20(f)	The Council agrees that "resolving" conflicts may not be clear language and may be difficult to achieve. The Council voted to adopt the revise the language to use the term "address" instead. The intent is to do more than identify conflicting information, evidence, and comments, because a significance determination has to be made and mitigation proposed that can achieve the goal of reducing significant impact. If there are conflicting means to determine and achieve that then those conflicts should be addressed.
	Contents of a Final EA	Adds "the"	§ 11-200.1-21	This wording preference was not adopted. There is no need to add articles throughout the rules when the meaning is clear.
	Notice of Determination for a Final EA	(a): suggests further clarification similar to that for final EISs	§ 11-200.1-22	Chapter 343, HRS, explicitly requires automatic acceptance for an EIS, but it is not explicit for FONSI. The Council does not appear to have explicit authority to authorize this under the rules.
	Notice of Determination for a Final EA	(e)(2): Questions why there would need to be an accepting authority when it's a FONSI	§ 11-200.1-22(e)(2)	This makes sense as the term "accepting authority" is relevant when EISs are being undertaken and a FONSI is a determination that no EIS is needed. The language has been revised from "accepting authority" to "approving agency".
	Consultation Prior to Filing a Draft EIS	Same question re singular/plural for approval	§ 11-200.1-23(a)(3)	This comes from the existing 1996 rules language. The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, but may require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.

Name	General Topic	Specific Comment	Rules Section	Response
	Consultation Prior to Filing a Draft EIS	Adds "applicant" to align with rest of section	§ 11-200.1-23(b)	While the Council did not adopt the suggested edit, the Council revised this section because it found that it was more appropriate to change "proposing agency" to "accepting authority" instead of adding "applicant" as the accepting authority has a responsibility to ensure the proposing agency or applicant has conducted sufficient consultation.
	Content Requirements; Draft EIS	Same comment re cost-benefit analyses	§ 11-200.1-24(b)	The use the term cost-benefit analysis comes from the existing 1996 rules and has not been an issue to-date. In general, it means looking at the trade-offs, not necessarily an applicant business pro forma or business plan that would share proprietary business information. Any private report must be attached as an appendix to the document and made available to the public. Any proprietary information may be redacted.
	Content Requirements; Draft EIS	(2) Same comment re relying on definition of "effects"/"impacts"	§ 11-200.1-24(d)	The Council has adopted the proposed edits by this comment by deleting the qualifications used for "effects". The Council emphasizes that this deletion is not intended to make the language weaker, but to make clear that in all instances where "effects" or "impacts" are used, it includes direct, indirect, secondary, and cumulative effects/impacts.
	Content Requirements; Draft EIS	(7) Wants clarification on documents that are being required	§ 11-200.1-24(d)	The draft rule has been revised to make clear that the purpose of this subsection is to identify any previous EAs or EISs for the proposed action and whether they are being or should be incorporated by reference.
	Content Requirements; Draft EIS	Suggests that (1) and (4) are not examples of a reasonable alternative that "could attain the objectives of the action"	§ 11-200.1-24(h)	The Council voted to approve additional revisions to this section. Items (1) and (4) of the Draft Proposed Rules did not appear to be examples that could obtain the objectives of the action. The no action alternative is the bedrock of impact analysis. The Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508) for implementing the National Environmental Policy Act of 1969 (NEPA) state that NEPA analyses shall "include the alternative of no action" (40 CFR 1502.14). The no action alternative is something that should always be in an EA or EIS as it is an analysis of the current situation and how it is projected to continue. As such, it was moved to the beginning of subsection (h).
	Content Requirements; Draft EIS	Suggests moving last clause to (h)(5), thinks this is a mistake from the old rules that we need to clean up	§ 11-200.1-24(i)	The phrase "in any event" is unnecessary and has been deleted. The separate and distinct section pursuant to 11-200.1-24(h) describing the alternatives is to have one spot to review what the alternatives. The analysis of those alternatives in comparison to the preferred alternative is conducted throughout the EIS.
	Content Requirements; Draft EIS	Things need to make clear that the plans relied on need to be public, approved plans	§ 11-200.1-24(j)	The 1996 Rules and Final Proposed Rules refer to proposed or approved plans in the draft EIS contents section. The Council acknowledges that it would be very helpful for clarifying how to handle plans that were approved but never implemented or proposed but never finalized even after years. There are also plans undergoing updates at the same time as an EIS and guidance on how to handle those concurrent processes would be helpful. The Council has therefore asked OEQC to clarify this through guidance. The Council declined to limit the Final Proposed Rules to approved and final plans as suggested by the comment in order to recognize that there may be situations where a plan is currently going through an update but not yet finalized. The Council also recognizes that there may be plans out there that are never finalized. The language of this rule is not meant to say that plans that are never finalized or otherwise abandoned should be followed.
	Content Requirements; Draft EIS	Suggests that language related to the alternatives analysis should be consolidated into one section 11-220.1-24(h)	§ 11-200.1-24(i) and (o)	The separate and distinct section pursuant to section 11-200.1-24(h) describing the alternatives is to have one spot to review what the alternatives are. The analysis of those alternatives in comparison to the preferred alternative is conducted throughout the EIS.
	Content Requirements; Draft EIS	(p) Adds clarifying language that the mitigation measure only happens if the project moves forward.	§ 11-200.1-24(p)	The Council adopted the recommendation.
	Content Requirements; Draft EIS	(r) Adds clarifying language	§ 11-200.1-24(r)	The Council adopted the recommendation.
	Content Requirements; Draft EIS	(s)(4) Clarifies which handouts at an EIS public scoping meeting should be included in the EIS	§ 11-200.1-24(s)(4)	The Council has adopted the proposed revisions as it clarifies the intent of the rule. The use of "any" captures the possibility of plural in case a proposing agency or applicant chooses to hold more than the one required EIS public scoping meeting. Clarification that the handouts are those provided by the proponent of the project, and not those brought to a meeting by anyone. The Council has asked that this clarification also be addressed by OEQC through guidance.
	Public Review Requirements for Draft EISs	Need to be clear that comments go the applicant as well	§ 11-200.1-25(b)	The intent of the rule is that so long as either the agency or applicant receives the comment, the comment must be responded to. Making the commenter send to both the agency and applicant and disqualifying the commenter from standing because the comment was received by only one or the other is too much of a process burden on the commenter. It is common in practice that comment letters are only sent to one entity. The burden is on the agency and applicant to ensure that it has all written comments sent to either the agency or applicant.
	Comment Response Requirements for Draft EISs	Same as above	§ 11-200.1-26	The intent of the rule is that so long as either the agency or applicant receives the comment, the comment must be responded to. Making the commenter send to both the agency and applicant and disqualifying the commenter from standing because the comment was received by only one or the other is too much of a process burden on the commenter. It is common in practice that comment letters are only sent to one entity. The burden is on the agency and applicant to ensure that it has all written comments sent to either the agency or applicant.

Name	General Topic	Specific Comment	Rules Section	Response
	Comment Response Requirements for Draft EISs	Suggests "address" instead of "resolve"	§ 11-200.1-26(d)	The Council agrees that "resolving" conflicts may not be clear language and may be difficult to achieve. The Council voted to adopt the revise the language to use the term "address" instead. The intent is to do more than identify conflicting information, evidence, and comments, because a significance determination has to be made and mitigation proposed that can achieve the goal of reducing significant impact. If there are conflicting means to determine and achieve that then those conflicts should be addressed.
	Comment Response Requirements for Draft EISs	Suggests taking out last clause so that the applicant does not have to argue its case to commenters.	§ 11-200.1-26	The word "overriding" may seem unnecessary but is used throughout the rules. This is existing language and the Council is not aware that it has been a point of issue to-date. Edits proposed by this comment have not been adopted.
	Content Requirements; Final EIS	Concerned that lack of specificity regarding "any public meetings" could invite litigation; wants Council to clarify	§ 11-200.1-27(b)(4)	This is an oversight in the draft. The intended language is the "EIS public scoping meeting" and has been revised accordingly.
	Acceptability	Concerned that references to "approving agency" throughout this section confuses the reader	§ 11-200.1-28	The Council agrees with the comment. For clarity, the EIS sections have been revised to refer to the "accepting authority". The definition of "accepting authority" has also been clarified regarding who the accepting authority is.
	Supplemental EISs	Suggests streamlined language Recommends deleting last sentence of subsection (a)	§ 11-200.1-30	In response to several comments opposing edits to the supplemental EIS section, the Council decided to not amend the supplemental EIS sections except for grammatical and housekeeping changes.
Stephanie Nagata, Office of Mauna Kea Management	Significance Criteria	Please add a clear statement of how positive or beneficial impacts affect the significance determination and need for level of review.	§ 11-200.1-13	The existing language does not qualify the term "effects" as being limited to either adverse or positive impacts. Therefore, both should be considered. Furthermore, subsection (a) explicitly requires the "sum of effects" be considered. OEQC may consider elaborating on this through guidance.
Sean O'Keefe, Alexander & Baldwin	Exempt Actions, List, and Notice Requirements	This section includes among general types of actions eligible for an exemption from the preparation of an Environmental Assessment "Demolition of structures, except those structures that are listed on or that meet the criteria for listing on the national register or Hawaii Register of Historic Places". Conversely, the existing Section 11-200-8(a)(8) identifies as an exempt class of action "Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS". Objections to the restriction on exemptions for structures that "meet the criteria" for listing on the Register.	§ 11-200.1-15(c)(6)	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
	Applicability of Chapter 343, HRS, to Agency Actions	A&B recommends that the existing language in 11-200-6(b) listing the categories of actions requiring the preparation of an EA be retained, and that consideration be given to language clarifying the scope of the HRS 343-5(a)(9)(A), HRS trigger as it applies to non-domestic wastewater treatment units, particularly those associates with ag operations.	§ 11-200.1-9(a)(2)	The Council chose to not define the triggers separate from their use and definition in Chapter 343, HRS, as the Legislature has a propensity to amend the triggers, which would make the Final Proposed Rules inconsistent.
Kathleen Pahinui	General	Need more community input. Require presentations to Neighborhood Boards for EA & EIS.	n/a	The rules require community input including from neighborhood boards during the early consultation and draft phases. The neighborhood boards only exist in Honolulu and do not have parallel entities in the other counties. The Final Proposed Rules apply to all counties in the state and are drafted so as not to place an additional process step that would only be applicable for actions on Oahu. The Council has asked that OEQC clarify this through guidance.
Mark Perriello, Kaua'i Chamber of Commerce	Purpose	Reword: "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." [too aspirational and hard to fulfill] "Make efforts to 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."	§ 11-200-1.1 (c) (3)	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions; EA	Replace the word “evidence” with “facts” in the new definition of EA as a written evaluation “that serves to provide sufficient evidence and analysis”	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: 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, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.
	General Types of Actions Eligible for Exemptions	Support affordable housing provisions.	§§ 11-200.1-15	Acknowledged.
Vincent Shigekuni, PBR Hawaii & Associates	Applicability of Chapter 343, HRS, to Agency Actions	Asks why no language like 11-200. 1-9(b) for “Agency Actions” (11-200. 1-8)?	§ 11-200.1-8	Agency actions may trigger environmental review regardless of whether or not an action requires a discretionary approval. This is because use of county or state lands or funds – which an agency is presumably always doing in an “agency” action, is by itself a trigger. In contrast, for an applicant to be subject to Chapter 343, HRS, the action must both be triggered by one of the triggers set forth in HRS 343-5 <i>and</i> require a discretionary approval.
	Significance Criteria	OEQC should designate what agency’s data they suggest planners rely on for determining if a project is proposed in a “sea level rise exposure area	§ 11-200.1-13(b)(11)	The identity of agencies that maintain data on expected sea level rise may change through the years. More important is the scientific backing behind the data, including differences in findings and interpretation, which should be discussed in the EA or EIS. Currently, the DLNR has published the authoritative sea level rise report for planning purposes in Hawaii however agencies and applicants should always consider any relevant evidence.
	General Types of Actions Eligible for Exemption	1. Section (c)(6) notes that "Demolition of structures, except those structures that are listed on or that meets the criteria for listing on the national register or Hawaii Register of Historic Places" would qualify for an exemption determination. We aren't sure at what point an applicant would be made aware that their property/structure would "meet the criteria of listing on the national register or Hawaii Register of Historic Places" and would therefore need to prepare a Chapter 343 Hawai'i Revised Statutes review document. We offer this comment for the EC's consideration.	§ 11-200.1-15 (c) (6)	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
	General Types of Actions Eligible for Exemption	Should be revised be to add “emergency housing” or “safe-zone housing”? for areas with “homeless” or “houseless” and who cannot qualify for “affordable housing” rentals. These projects should not share the criteria of 11-200.1-15 (c)(10)(B) and (10)(C) – i.e., conformance with existing state urban land use classification and county zoning	§ 11-200.1-15	True “emergency” housing (such as housing necessary after a major natural disaster) may be covered under a state emergency proclamation, which suspends many laws including Chapter 343, HRS. If the situation is less dire or one that is ongoing or systemic, such problems should be addressed through the appropriate actions. Such proposals to utilize state or county funds and/or lands and contradict recognized land use districts and zoning should not be exempt, particularly considering that they may be large and impactful projects that require consideration of impacts and mitigation, and public review.
	EISPN requirements	The requirement of providing when and where an EIS public scoping may be held, could be problematic in implementation. For instance, what if due to unforeseen circumstances, the meeting location or date or time is changed from what is reported in an EISPN	§ 11-200.1-23 (a) (9)	It is reasonable to believe that in this somewhat unusual circumstance, an accepting authority or court reviewing the validity of an EIS process would consider whether a good-faith and reasonably effective effort was made to inform the public of the change, through print media, the OEQC Environmental Notice, mailing lists, or other means. In the worst case, the meeting may need to be postponed until the proper notice can be given.
	Response to comments	Please clarify if the EIS public scoping meeting must be limited to a “public hearing format.” In practice, we find many residents prefer to provide oral public comments, one-on-one, to avoid “public speaking” before an audience	§§ 11-200.1-24 (s) (2), 11-200.1-24 (s) (3), 11-200.1-26 (b), and 11-200.1-26	The Council acknowledges this concern and has asked OEQC to prepare guidance on this after adoption of the rules. The EIS public scoping meeting is not the only way for someone to provide their comments on a project. Those who do not wish to speak in public may submit written comments during the public review periods.

Name	General Topic	Specific Comment	Rules Section	Response
Laulani Teale	General	Should require permission from people consulted before using their name.	n/a	The Council is aware that there are cases where agencies or applicants have represented that people who attended a meeting are supporting the action when the person in question only attended to learn or oppose the action. On the other hand, an agency or applicant may send a letter requesting comments and receive no reply. The agency or applicant is obligated to identify that this person was contacted and received no reply. Trying to obtaining permission before including the person's name as someone contacted would be impractical. In the context of environmental review, the default assumption for everyone involved is that the information and process is public. If there is a need for confidence, such as not disclosing the fact that someone attended a meeting, then that should be resolved between the individual and the agency or applicant. Section 11-200.1-24(s) provides that attendees to EIS public scoping meetings and people who were consulted but had no comment should be identified as having no comment. This helps address the situation where an agency or applicant might try to represent the person as supporting the action. Likewise, an agency or applicant should not represent that by simply signing in to a meeting, that person supports or opposes an action if that has not actually been represented by the person signing in.
		State should choose EIS preparers from a list, not the developer. And fixed cost scale.	n/a	Chapter 343, HRS, provides that applicants are responsible for preparing their own EISs. At this time, the Council is unaware that whether or not and which agencies would vet all of the available preparers and under what criteria.
Kimbal Thompson, Marine and Coastal Zone Advocacy Council	Emergency Actions	Supports greater review of emergency actions. Provides multiple examples of shoreline hardening in southwest Maui that should have had review under 343. Supports the requirement that emergency actions be substantially completed within 60 days to make it more difficult for agencies to use the emergency action exemption where it does not apply.	§ 11-200.1-8(b)	Support acknowledged.
	Contents of EAs and EISs; Sea Level Rise	Wants sea level rise exposure areas added to list of areas that could be considered environmentally sensitive.	§ 11-200.1-13	Support acknowledged.
	Definitions	Wants a definition of "cultural practices"	§ 11.200.1-2	The Council has declined to define these terms as doing so may run the danger of being under inclusive in some situations over inclusive in others. Furthermore, the Council believes that natural resources is self-explanatory.
	General Types of Actions Eligible for Exemption; Exemption Lists	Certain beneficial projects in the coastal zone known to have little or no impact on sensitive resources be exempted from HRS Chapter. For example, fishpond wall reconstruction, removal of invasive species, installation of pin moorings in sandy substrate to prevent anchoring boast in coral. Another way could be to do something like a categorical exclusion or CATEX.	§§ 11-200.1-15, 16	The subject of beneficial projects has been discussed by the Council. The examples listed would appear to be eligible to be on an agency's exemption list and may otherwise qualify for an individualized exemption. Also, the Council is promoting the use of programs going through environmental review and has looked to DLNR's fishpond restoration EA as an example of best practice that other agencies should follow. The language of the statute sets forth clear triggers. If one of these actions triggers review, it must be done. The level of review for beneficial projects may not be as intense and those with adverse impacts.
Pamela Tampa, Maui Chamber of Commerce	Purpose	Reword: "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." [too aspirational and hard to fulfill] "Make efforts to 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."	§ 11-200-1.1 (c) (3)	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.
	Definitions; EA	Replace the word "evidence" with "facts" in the new definition of EA as a written evaluation "that serves to provide sufficient evidence and analysis"	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: 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, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.

Name	General Topic	Specific Comment	Rules Section	Response
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an "analysis" of impacts and alternatives considered instead of an "identification and summary" of those impacts and alternatives. An "analysis" requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	The Council believes that the new language does not impose any greater requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language makes this explicit and clearer.
	Content Requirements; Draft EIS	"reasonably foreseeable" consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: "the reasonably foreseeable environmental consequences"	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent.
Lee Sichter	Definitions	Lack of definition of "substantial".	§ 11-200.1-13	The Final Proposed Rules retain the word "substantial" from the 1996 Rules. Combining "substantial" and "adverse" is meant to set a standard that is higher than just having an effect and emphasizes that the focus is on negative effects rather than positive ones. Specifying a "loss ratio" (i.e., losing over 100 endangered birds) as the commenter suggests would be overly burdensome given that every action undergoing environmental review is different. The Final Proposed Rules and Chapter 343, HRS, do not set any particular threshold, recognizing that actions vary greatly across the different contexts of Hawaii. Each must be assessed on a case by case basis and what is appropriate for each will vary.
	General Types of Actions Eligible for Exemption	Recommends leaving the sub-paragraph c6 as is, as requiring an EA to be done prior to the demolition of a 50+ year old building would add more time and money onto a development timeline, and make it more difficult for small businesses to redevelop their property.	§ 11-200.1-15(c)(6)	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
Marti Townsend, Sierra Club	Significance Criteria	The newly proposed regulations add the words "likely to" ahead of the list of potential conditions that would require an environmental impact statement. The standard instead should be "raise substantial questions regarding." If the trigger to requiring an EIS is something is LIKELY to happen, then it will be much harder to require an EIS. Besides how would one know if something is likely to happen? The whole purpose of an environmental evaluation is to determine IF there might be impacts from the proposed action, and if so how severe would the impacts be.	§ 11-200.1-13(b)	The Council rationale for the Final Proposed Rules relied on 2005 case law that interpreted "may" to mean "likely". In response to this comment and recent case law, the Council revised "is likely to" to "may".
	General Types of Actions Eligible for Exemption; Affordable Housing	Suggests this exemption should define affordable housing as 60% AMI or below and expire ten years after adoption. If the housing crisis still exists in 10 years, then we can consider an extension of the exemption.	§ 11-200.1-15(c)(11)	The Council has worded the language to enable agencies to apply the exemption within the context of their own decision-making on what is affordable housing. Adding a new and separate AMI target will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas. The Final Proposed Rules as a whole have been drafted so as to allow for continued application even if there are changes to Chapter 343, HRS, or changing conditions over time (e.g., the appropriate AMI for determining affordable housing).

Name	General Topic	Specific Comment	Rules Section	Response
	Content Requirements for EAs and EISs	The proposed revisions missed the opportunity to address the growing popularity of "pay to degrade" arrangements, where project proponents provide financial support for ancillary, indirect activities to "mitigate" the significant impact anticipated by a project proposal. These regulations should make clear that only mitigation measures that directly reduce the significant impact anticipated by the project should be considered, e.g. create new habitat to off-set habitat that will be lost due to a project.	§ 11-200.1-18, -24	The Council has declined to definite "mitigation" at this time. The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The Council recognizes that what is appropriate mitigation for specific actions will be determined on a case by case basis.
	Exemption Lists	Suggests there is a need to define the word "minor" in the context of the restructuring of the exemption process, because properly employing exemptions hinges almost completely on whether an agency considers a proposed action to be "minor." Also, renewed exemptions should be reconsidered by the agency in full, instead of simply just granted again because it was granted before.	§ 11-200.1-16	The existing and Final Proposed Rules in general do not specify design thresholds as the focus is on potential for impact. An example of a minor change in use may be from a restaurant to a food bank, which may trigger Chapter 343 because of the involvement of government funds but the current rules do not provide for a means for an exemption. Similarly, context is important. The Council has to ensure the rules are applicable and meaningful across the entire state for all islands and contexts. Adding a fourth story to a three-story building in an urbanized area such as Waikiki may not have much potential for significant impact but could on Molokai. In order to reduce the potential misuse of exemptions, the Council proposes requiring agencies to publish in the periodic bulletin lists of what they have exempted each month so that the public may review them. The existing rules only require agencies to make a record of the exemption and produce it to the public upon request.
	Supplemental EISs	The issue of when is an environmental evaluation too old to be valid has been seriously and repeatedly litigated in Hawai'i. This rewrite of the regulations should not miss the opportunity to provide clarity on this question. Suggests regulations should be amended to: A) Set a shelf-life EAs and EISs. We propose 5 years. B) Make clear that changed conditions to the surrounding environment and community -- not just to nature of the proposed action -- are grounds for requiring a new environmental review. C) Require environmental review on the renovation or reconstruction of previously exempted projects.	§ 11-200.1-30	The Council recognizes that the supplemental EIS process needs improvement and was unable to reach consensus on it during this rules update. The Council has indicated that it is willing to look at future rulemaking to address supplemental EISs. The Final Proposed Rules address item A by introducing section 11 to promote the DPP practice of the "Green Sheet" to document the ongoing validity of an existing environmental review document. The Kulima decision (Turtle Bay) made clear that changed conditions to the environment may be grounds for requiring a supplemental review. The Final Proposed Rules address item C in sections 11 and 12.
Malia Waits	Definitions	Concerned about the relevant substitutions for the FONSI wording in the new rule changes. There is no clear relevance addressing this in particular.	§ 11-200.1-2	The definition of FONSI is the same in the 1996 version as it is in the Final Proposed Rules. The acronym replaces the former term "negative declaration" which is the same thing as a FONSI. "FONSI" is the correct and common term used for a "negative declaration".
	Exemptions generally	Another concern is that the exemption process has decreased operational efficiency when communicating with the public on exemptions granted.	§ 11-200.1-15, -16	Acknowledged.
Michael Yee, Hawaii Planning Department	Exemption Lists	Suggests that clarifications concerning de minimis actions and thresholds for exemptions will assist County agencies in identifying the actions that require examination for their potential to cause significant impacts, while avoiding needless documentation for truly minor projects with no potential.	§ 11-200.1-16(b)	Acknowledged
	Consultation Prior to Filing a Draft EIS	The requirement to provide a scoping meeting at the EIS level is in line with the federal procedures and will assist all parties in properly determining the scope of the action and the studies that will need to be completed.	§ 11-200.1-23(8)	Acknowledged
	Consultation Prior to Filing a Draft EIS	The requirement for audio recordings of the oral comments made during the comment portion of the scoping meeting is a fair one that will ensure that a valuable piece of public input, especially in a culture with a long and important oral tradition is not ignored or lost.	§ 11-200.1-23(d)	Acknowledged.
	General	Likes the requirements concerning cultural impact assessment, proceeding direct to EIS, and affordable housing that were implemented as laws but not integrated into the rules.		Acknowledged.

Name	General Topic	Specific Comment	Rules Section	Response
	General	The reorganization, clarifications and consistency improvements in the sections that deal with supplemental documents and programmatic EISs will make the process much easier to understand and navigate.		Acknowledged.
	General	The simplification and clarification on responses to written comments will be helpful to agencies as they prepare or evaluate EAs and EISs.		Acknowledged.
	General	The section of the rules dealing with conducting joint federal-state environmental review is an important improvement that will assist agencies involved in this process.	§ 11-200.1-31	Acknowledged.
	Filing Requirements	It is important to have provisions in the revised rules that modernize submittals and deadlines to consider electronic communication, which will help save time, money and resources.	§ 11-200.1-4, -5, -6	The Final Proposed Rules have added "electronic" to the filing section to clarify that submittals must be electronic and through guidance will state that commenting and responding and distributing documents is preferably done via electronic communication, however at times paper may be appropriate as an environmental/social justice concern.
	Exemption Lists	Regarding exemptions, we support the provision that eliminates the requirement for consultations and publication if the agency has properly considered an exemption list and the Environmental Council has approved the exemption list for the agency within 7 years of the action. We recommend adding a clarification that once an action is listed on an exemption list, it is exempt across the board so that any agency can use exemptions from another agency's exemption list.	§ 11-200.1-16	The Council reviewed this in earlier drafts and believes that the agency list is specific to the agency as the types of actions done by many agencies vary greatly; however, other agencies may consult with the Council to add that exemption element to their own list.
	Significance Criteria	We support requiring consideration of the impacts of sea level rise and greenhouse gases as significance criteria.	§ 11-200.1-13	Acknowledged.
Kathy Sokugawa, Honolulu Department of Planning and Permitting	Definitions	Agree with definition of "program."	§ 11-200.1-2	Acknowledged.
	Filing Requirements	Include that the Hawaii Documents Center is part of the Hawaii State Library.	§ 11-200.1-5	The Council has not revised the rules to include this reference but has asked OEQC to include the explanation in guidance.
	Identification of Approving Agency and Accepting Authority	Support 11-200.1-7	§ 11.200.1-7	Acknowledged.
	Significance Criteria	Further clarification needed to define what is meant by a "substantial" amount of greenhouse gas emission, especially in light of National and State goals and policies.	§ 11-200.1-13	A threshold is not set for anything else in the significance criteria. The complexity of factors involved in each individual EA or EIS is too great to have a formula and the Council has declined to set a threshold. The Council acknowledges that this is a difficult and controversial part of analysis. This decision recognizes the complexities and uniqueness of each action. This is also consistent with Hawaii case law, which analyzes the sufficiency of an environmental review document under the rule of reason. This allows agencies and applicants to assess what is appropriate under the specific circumstances. NEPA guidance from the U.S. Environmental Protection Agency on assessing cumulative impacts is very helpful and provides something of a precedent.
	General Types of Actions Eligible for Exemption; Affordable Housing	...we do not support criteria (C) that will only exempt affordable housing if the proposed action is consistent with existing county zoning that allows housing. Discusses that HRS 201H sometimes proposes housing in areas where the county does not permit housing. They recommend that (C) be amended to consider the 201H approval process. Presumably that would allow an exemption in areas outside of county housing areas.	§ 11-200.1-15	The Council believes that exempting affordable housing that in areas that zoning and General Plans have not deemed appropriate for housing would be inappropriate, and that an EA or EIS, if significant impacts are found, is appropriate. Housing outside of urban development is inconsistent with the discussion of this exemption.

Name	General Topic	Specific Comment	Rules Section	Response
	Public Review and Response Requirements for EAs and EISs	We do not support the limiting of responses to substantive comments ...though non-substantive may be grouped. Also, do not allow anonymous comments, it promotes duplication, pejorative and non-substantial comments.	§ 11-200.1-20 & -26	The new response requirements have been well vetted by the Council and other interested parties. The requirement to reply only to substantive comments is already in the 1996 Rules. In practice, many proponents reply to everything but there are instances of numerous pages of material that do not relate to the project at all. The new response requirements are included to forestall abuses of the comment process. Such instances should not warrant detailed discussion or analysis. The request that anonymous comments should not be allowed and/or no response should be required is inconsistent with the purpose of Chapter 343, HRS, which is to focus on impacts.
	Consultation Prior to Filing a Draft EIS	Supports new requirement for public scoping meetings.	§ 11-200.1-23	Acknowledged.
Suzanne Case, Department of Land and Natural Resources	Applicability of Chapter 343 to Agency Actions	HB 2106 requires all EAs and EISs to include consideration of sea level rise. DLNR expected the new rules to have substantive discussion of sea level rise in the "Content Requirements" section, concerned that this does not comport with the law.	§ 11-200.1-8	The proposed language was under consideration when the Legislature passed HB 2106 and already going through public hearing when Governor Ige signed the bill into law. The Legislature and Governor expressly did not find the proposed language to not comport with HB 2106. By adding the sea level rise exposure area to the significance criteria - which are the key findings of an EA - all agencies must take it into account when deciding if a proposed action warrants an exemption, EA, or EIS. The contents of an EA or EIS would analyze the information in supporting a significance determination related to the potential for significant impact from being located in a sensitive area. No specific method of analysis is prescribed in the rules and the Council does not support prescribing a method for any one impact. Analysis methods and best practices evolve faster than rules updates and any method prescribed by rule would become outdated. As the proposing agency and approving agency for numerous actions, the DLNR can exercise its authority in applying analysis methods or requesting them as a commenting agency on others' actions.
	Consideration of Previous Determinations and Accepted Statements	Agrees that prior exemptions, FONSI or accepted EISs can be incorporated into exemption notices.	§ 11-200.1-12	Acknowledged
	Consideration of Previous Determinations and Accepted Statements	Concerned that there is a reference to "programmatic" EIS and EA here, but not elsewhere in the rules. Suggests adding definition and recommends that OEQC formalize programmatic environmental documents.	§ 11-200.1-12	Note that earlier versions of the rules proposed a distinct section covering programmatic EISs, but it was determined that this would require sections for exemptions, EAs, and potentially supplemental EISs as well. In order to provide greater clarity, the Council proposed definitions of "project" and "program," which allows for the preparation of programmatic exemptions, EAs, and EISs. The Council replaced the word "programmatic" with "program" as "program" is a defined term in the Final Proposed Rules, but this is another way of saying programmatic because programmatic is the adjective form of program. Thus, the Council has formalized programmatic documents without the confusing terms.
	Significance Criteria	Supports the inclusion of culture into the significance criteria but recommends that "cultural resource" and "cultural practice" be defined.	§ 11-200.1-13	The Council believes that it is not the place of the Council to define cultural resources or practices. The Constitutional Convention declined to define the concepts, as did the Legislature, and DLNR, which uses the concepts in its rules.
	Exemption Lists	Recommends council concurrence should only be needed when amendments are sought. Suggests changing proposed language to require agencies to review their own exemption lists within 7 years and then submit a letter to the Council acknowledging that the existing list is still valid.	§ 11-200.1-16	The Council continues to believe that agencies should revisit the list periodically even when no changes are proposed, as the Council may have changes to recommend or other best practices have evolved of which a given agency may be unaware.
	Exemption Notices	Wants clarification as to whether agencies are required to submit their list of exemptions for publication each month. Notes that this would be time consuming, and that DLNR would prefer to continue keeping exemption notices on file for review upon request by the public or an agency.	§ 11-200.1-17	Agencies would be required to submit a list of their exemptions for publication each month. The Council is trying to balance the burden on agencies to document and track their decision making with the burden on the public to become apprised of an exemption and to be able to respond to the exemption in a timely way. The Council has also focused on which exemptions would be required to be submitted as only those items on Part 2 of the Exemption List would be published.
	Preparation and Contents of a Draft EA	Recommends: (1) Amending (d)(6) to include state sea level rise exposure maps.	§ 11-200.1-18(d)	This suggestion has been incorporated in the rules, which now include sea level rise exposure maps as examples of maps that should be included in both EAs and EISs. It would not be appropriate for require all EAs to include such maps, as many projects are in areas well inland and are at no risk from sea level rise.
	Preparation and Contents of a Draft EA	(2) Adding (d)(11) to include "Discussion of vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-18(d)	A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.

Name	General Topic	Specific Comment	Rules Section	Response
	Draft EIS Contents; Sea Level Rise	Recommends adding "The draft EIS shall contain a separate and distinct section that provides State sea level rise exposure maps and discusses vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-24	This suggestion has been incorporated in the rules, which now include sea level rise exposure maps as examples of maps that should be included in both EAs and EISs. It would not be appropriate to require all EAs to include such maps, as many projects in areas well inland are at no risk from sea level rise. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.
Jade Butay, Department of Transportation	Filing Requirements	Language should be added that makes filing with the OEQC electronic unless otherwise noted.	§ 11-200.1-4, - 5, -6	The Council adopted the recommendation.
	Filing Requirements	Language should be added that makes distribution of environmental documents through download link or other electronic distribution forms allowed unless otherwise noted.	§ 11-200.1-4, - 5, -6	The Council adopted the recommendation for the bulletin and the OEQC shall develop guidance to that effect for EAs and EISs. One concern about always requiring electronic distribution is environmental/social justice concerns about access to documents.
	Acceptability	DOT objects to 30-day period to make decisions when OEQC itself recognizes decisions may take longer and allows extension of time. Agencies should be allowed same extension of time as OEQC.	§ 11-200.1-28	The proposed change is consistent with statutory language. Section 343-5(e), HRS, prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. The proposed change is so that OEQC may also have the same extension of time that agencies are able to have. The OEQC has the discretion to offer a recommendation to the agency and the proposed change allows for the recommendation to be within that 15 day extension.
	Applicability of Chapter 343 to Agency Actions; Emergency Actions	Ensure emergency actions rules and procedures are consistent and do not conflict with other sections of the HRS that discuss emergency powers.	§ 11-200.1-8	The Final Proposed Rules are consistent with the HRS regarding emergency powers.
	General	Following the adoption of the revised rules, DOT requests training be provided by OEQC on how the new rules will be implemented. This would be useful for HDOT staff.	n/a	The Council is working with OEQC to develop a plan for updating its guidebook and doing training on the new rules
	Purpose	<del>[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.</del>  Original language: [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.	§ 11-200.1- 1(b)	This language is existing language from the 1996 rules that originally was in the EIS sections of the rules. The Council believes this language is important to retain and make clear that these considerations apply throughout the environmental review process, so intentionally moved it to the front purpose section.
	Purpose	In preparing any <del>document</del> environmental study, proposing agencies and applicants shall....	§ 11-200.1-1 (c)	The Final Proposed Rules change this to EA or EIS, as an environmental study is not a specific thing in Chapter 343, HRS.
	Definitions	"Action" means <del>any</del> programs or projects to be initiated by and agency or applicant Delete the word "any" because "any program or project" is too broad a definition.	§ 11-200.1-2	The definition is from Chapter 343, HRS. DOT's suggestion would narrow the definition and is contrary to the language and intent of the statute. The Council proposed definitions to "project" and "program" to help address the concerns about what is a project or program to go through environmental review.
	Definitions	Add definition of "Days" Define if working or calendar days and make consistent throughout the rules.	§ 11-200.1-2	The statute and rules use "days" in both the sense of business days and calendar days. The Final Proposed Rules clarify whether a time period is in terms of business days or calendar days in specific sections. The computation of time section 11-200.1-3 has been made clearer to help understand how to count days.
	General	Compile a list of Discretionary consents by agency.	n/a	Chapter 343, HRS, assigns responsibility for determining when it applies to agencies, not OEQC or the Council. It is up to the agency to determine if its determination is discretionary or ministerial.
	Definitions	Add definition of "Ministerial Consent"	§ 11-200.1-2	The Final Proposed Rules include a definition for this.
	Definitions	Add definition of "Early Consultation"	§ 11-200.1-2	Early consultation is as described in the sections. A definition is not necessary.
	Definitions	Change to "EIS public <del>scoping</del> consultation meeting"	§ 11-200.1-2	The purpose of the required meeting is for scoping the content of the EIS. An agency could also conduct consultation meetings if it chooses to do so.

Name	General Topic	Specific Comment	Rules Section	Response
	Significance Criteria	human and animal communities, <del>health</del> , air, water, minerals, flora, fauna, ambient noise, and Listing "health" is unnecessary and problematic.	§ 11-200.1-13	Health is already included in the significance criteria. The Council made no change.
	General Types of Actions Eligible for Exemption	Add definition - Exemption: minor and/or routine actions that are anticipated to have minimal or no significant effect on the environment such that the preparation of EAs and/or EIS necessary are based on a determination by proposing or approving agency.	§ 11-200.1-15	An "exemption" is shorthand for a specific type of determination under Chapter 343, HRS, that is memorialized in an "exemption notice," which is defined.
	Definitions	A FONSI, Exemption, or approved EIS is required prior to implementing or approving the action. Insert into the definition of FONSI. Without it, the definition is incorrect.	§ 11-200.1-2	DOT's proposed revision to this sentence is not needed for the definition. The last sentence is about process, not intrinsic to the meaning of a FONSI. The Council has removed process elements from the proposed definitions.
	Definitions	Add to the definition of "program": plan resulting in a single or multiple projects having wide application or restricting the range of future alternative policies or actions,	§ 11-200.1-2	Language immediately prior to this sentence already captures the concept that multiple separate projects considered together may have an impact and could be considered a program. The Council did make other changes to the definition.
	Definitions	"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.	§ 11-200.1-2	A single project is not a program, but implementing a project over long timeframe does not automatically make it a phased project. Section 11-200.1-10 offers additional clarity on a single project being a phased project.
	Computation of Time	The language is confusing, suggest clarifying if time is calendar or working days.	§ 11-200.1-3	The statute and rules use "days" in both the sense of business days and calendar days. The Final Proposed Rules clarify whether a time period is in terms of business days or calendar days in specific sections. The computation of time section 1-200.1-3 has been made clearer to help understand how to count days.
	Consultation Prior to Filing a Draft EIS	Filing notice of an EIS public scoping meeting (which should change to consultation) is a new requirement. Deciding to hold one should be based on the complexity of the project. Mandatory EIS scoping meetings adds another layer to the process, adds time and costs and be a negative deterrent to development. Suggest consultation meetings could be held at the discretion of the agency.  Final EAs, including notice of a FONSI, or an EISPN with thirty-day comment period and notice of EIS public scoping consultation meeting, and appropriate addendum documents;	§ 11-200.1-4 § 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.
	Consultation Prior to Filing a Draft EIS	Recommend deleting "EIS public scoping meeting" or changing it to a consultation meeting.	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.

Name	General Topic	Specific Comment	Rules Section	Response
	Filing Requirements	<p>A letter can be transmitted through the postal service, fax, or electronically (PDF though email).</p> <p>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.</p>	§ 11-200.1-5	A written letter does not mean a paper letter. The Final Proposed Rules require all submittals, including withdrawal notices, to the OEQC be electronic.
	Filing Requirements	<p>What's the Hawaii Documents Center? Need an address.</p> <p>proposed action is to occur and one paper copy at the Hawaii Documents Center.</p>	§ 11-200.1-5	The Hawaii Documents Center is part of the State Library System. Should its name or location change, then that will be inherited, just as agency exemption lists from 20 years ago are still being used by their successor agencies. This information is publicly available to anyone who chooses to look for it. To avoid having to revise the rules each time an address is changed, the rules do not refer to any particular address.
	Filing Requirements	<p>Subsection (e)(1)(C) provides distribution requirements for a Draft EA but this is the only section where this language appears. By comparison, (e)(5) says to file the Draft EIS with the accepting authority and OEQC, deposit one paper copy in the nearest state library, and one at the Hawaii Documents Center. Language should be consistent.</p> <p>(C) Distribute, or require the applicant to distribute, concurrently [with the filing in paragraph (5),] with its publication, the draft [environmental assessment] EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals [which] that the proposing agency reasonably believes to be affected;</p>	§ 11-200.1-5	Draft EAs even for applicants are filed by agencies with the OEQC for publication. EISs are filed by applicants with the OEQC and simultaneously with their approving agency/accepting authority.
	Republication of Notices, Documents, and Determinations	<p>Delete this section. The issue with extending comment periods should be a stand-alone discussion, case-by-case basis and not connected to republication of documents. If the process allows comment-period extensions, new language should allow this process, without republication of the environmental documents.</p> <p>§11-200.1-6 Republication of Notices, Documents, and Determinations</p>	§ 11-200.1-6	The section addresses a clear need in the process for agencies wishing to circulate documents again to the public and requesting a standardized means to do so. Refer to the Rationale document for why this section was created.
	Applicability of Chapter 343 to Agency Actions	<p>Add to the end of 11-200.1-8(a)(1) the following text "Except routine activities and ordinary functions that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly do not rise to the level of an action requiring chapter 343, HRS environmental review. Examples of routine activities and ordinary functions may include, among others, routine repair, maintenance, purchase of supplies, continuing administrative activities involving personnel only and personnel-related matters, and the routine rental and/or lease of interior building, office, warehouse, hangar, and/or commercial space (within the built environment) by lease, rental agreement, and/or revocable permit." The rental space in an airport has no potential to adversely affect the environment and is different from the issuance of leases, permits, and easements for development.</p>	§ 11-200.1-8	This change suggests moving language from the proposed section 11-200.1-16 Exemption Lists. It is not appropriate to put it in the trigger section because that implies that something is automatically out of Chapter 343, HRS, if it falls in this category. This recommendation would narrow the concept of "use" as its examples being things not falling at all in the ambit of Chapter 343, HRS, which may not be consistent with statute or case law. The language is more suited to the discussion of exemptions. The triggers are statutory and Chapter 343, HRS, applies if there is a use of state or county lands or funds. The exemption determination must be done after that.
	Applicability of Chapter 343 to Agency Actions	No definition of "substantially commenced"	§ 11-200.1-8	In response to comments received during consultation objecting to the Council's proposed definition of "substantial commencement" and asking for case law to control, the Council has declined to define that term.

Name	General Topic	Specific Comment	Rules Section	Response
	Applicability of Chapter 343 to Agency Actions	Recommends defining "substantially commenced". There may be occasions where DOT is called upon to repair or replace facilities substantially damaged after a disaster and during a declared state of emergency. However, prior to beginning repairs HDOT may need to acquire federal and state permits, conduct structural assessments, acquire funding, expedite procurement and contracts, develop and approve facility designs, deal with various insurance related processes through the State Risk Manager, etc. Based on the proposed language it is not possible to determine when or if the action has been "substantially commenced."	§ 11-200.1-8	This description of the steps that must be taken do not meet the definition of an emergency action as proposed. An "emergency action" is an action taken in "response to a sudden unexpected occurrence demanding the immediate action." DOT's description is of a permitting and procurement process does not seem to justify why environmental review would not be prudent but other permitting and financial matters would be. Furthermore, the Governor has authority to extend emergency declarations as needed until work is finished, as evidenced with several housing projects recently completed under multiple continuous emergency proclamations.
	Applicability of Chapter 343 to Agency Actions	Add the text to the trigger language: Except routine activities and ordinary functions that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly do not rise to the level of an action requiring chapter 343, HRS environmental review. Examples of routine activities and ordinary functions may include, among others, routine repair, maintenance, purchase of supplies, continuing administrative activities involving personnel only and personnel-related matters, and the routine rental and/or lease of interior building, office, warehouse, hangar, and/or commercial space (within the built environment) by lease, rental agreement, and/or revocable permit.	§ 11-200.1-9(a)	This change suggests moving language from the proposed section 11-200.1-16 Exemption Lists. It is not appropriate to put it in the trigger section because that implies that something is automatically out of Chapter 343, HRS, if it falls in this category. This recommendation would narrow the concept of "use" as its examples being things not falling at all in the ambit of Chapter 343, HRS, which may not be consistent with statute or case law. The language is more suited to the discussion of exemptions. The triggers are statutory and Chapter 343, HRS, applies if there is a use of state or county lands or funds. The exemption determination must be done after that.
	Applicability of Chapter 343 to Applicant Actions	Insert new item #2 and new wording: The agency that initially approves the primary action shall also be responsible for approving Chapter 343 requirements when secondary action within the highway or public right-of-way triggers an EA.	§ 11-200.1-9(b)	The language DOT recommends is from Section 343-5.5, HRS, and is not applicable to the rest of the statute, so would be inappropriate to add to section 9.
	Applicability of Chapter 343 to Applicant Actions	Insert "related and" because an individual action may be a necessary precedent but not tied to the larger action. Numbering is inconsistent as other sections start with lowercase alphabet.	§ 11-200.1-10	This is existing language since 1996 and has not been raised as a problem throughout the rulemaking effort. If it is a necessary precedent, it is related. Formatting will be reviewed and finalized by LRB.
	Determination of Level of Environmental Review	Disagree with the 30-day requirement for agency to approve. Insert the words <u>fully completed</u> request.	§ 11-200.1-14	The 30-day time period is in the existing rules. The words "fully completed" are redundant to the existing term "complete".
	Determination of Level of Environmental Review	The term "authorize" is unclear. Suggest replace with "require".	§ 11-200.1-14	"Authorize" is statutory language. The intent of the statutory language is that the agency does not compel an applicant who insists on an EA first to do an EIS, but does sign off on the applicant who wants to proceed to an EIS instead of first doing an EA.
	General Types of Actions Eligible for Exemption	Is the intent to allow to the general list of types of add to the Exemption List? if general list of types, is that necessary or can it just be done by adding to Exemption List.	§ 11-200.1-15	This provision is in the existing rules and would operate the same way in the Final Proposed Rules. All individual exemptions must be made in one of the general types ("classes" in existing rules). The Council can be petitioned to add general types (classes) to the list in 11-200.1-15(c) which would in turn enable the exemption list to be updated with types under that general type and the agency to make individual exemptions under that general type.
	Exemption Lists	HDOT suggests that OEQC develop a list of activities that should be placed under de minimis that can be used by all agencies. Agencies could add to this list when updating their own exempt list.	§ 11-200.1-16	Chapter 343, HRS, assigns responsibility for determining what actions may be eligible for exemption to agencies. It is up to the agency to determine if what it does is considered de minimis.

Name	General Topic	Specific Comment	Rules Section	Response
	Exemption Lists	(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. (1) For exemption lists where there are No changes and amendments are not requested, a letter submitted by the agency certifying that the existing list has been reviewed by the agency and No changes or amendments are required shall be sufficient to be granted continued concurrence. No meeting is necessary. (2) For exemption list where changes or amendments are requested, the Environmental Council shall meet to review the proposed changes prior to granting concurrence. In the event the council is unable to meet due to quorum, the existing exemption list is considered valid until the council can have quorum and meet to consider the proposed changes and amendments. The Environmental Council may review agency exemption list periodically.	§ 11-200.1-16	The Council continues to believe that agencies should revisit the list periodically even when no changes are proposed, as the Council may have changes to recommend or other best practices have evolved of which a given agency may be unaware.
	Preparation and Contents of a Draft EA	A proposing agency shall, or an approving agency shall require an applicant to [Seek] conduct Early Consultation, seeking, at the earliest practicable time, the advice and input of the county agency	§ 11-200.1-18	The Council adopted the recommendation, though without the capitalization.
	Preparation and Contents of a Draft EA	Delete: 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,	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (b), but ultimately decided that the language was important as it highlights the difference and directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.
	Preparation and Contents of a Draft EA	and other information obtained and considered in preparing the draft EA, including cost benefit analyses and reports required under other legal authorities.	§ 11-200.1-18	The information to include is commensurate with the determination to be made and if the FONSI or EISPN determination relies on underlying studies, reports, or cost-benefit analyses, then they should be included.
	Preparation and Contents of a Draft EA	Delete subsection (c) as the language creates confusion with the current process, which is working fine.	§ 11-200.1-18	The Council considered deleting the first sentence of subsection (b), but ultimately decided that the language was important as it highlights the difference and directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.
	Preparation and Contents of a Draft EA	Insert additional words "reasonable anticipated".	§ 11-200.1-18	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.
	Preparation and Contents of a Draft EA	(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 30-day public review and comment period (or as otherwise statutorily prescribed) public review periods.	§ 11-200.1-18	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only "if any". There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343, HRS, does not be put in conflict with the provisions of another statute.
	Notice of Determination of Draft EAs	(2) [reviewing] Reviewing any public and agency comments, [if any,] during the Early Consultation and 30-day public review and comment period and	§ 11-200.1-19	This is existing language and has not been a problem.
	Notice of Determination of Draft EAs	Delete the reference to accepting authority as this is about an anticipated FONSI.	§ 11-200.1-19	The Council adopted the recommendation.

Name	General Topic	Specific Comment	Rules Section	Response
	Public Review and Response Requirements for EAs	Revise language so that comments are sent to both the agency and the applicant.	§ 11-200.1-20	The intent of the rule is that so long as either the agency or applicant receives the comment, the comment must be responded to. Making the commenter send to both the agency and applicant and disqualifying the commenter from standing because the comment was received by only one or the other is too much of a process burden on the commenter. It is common in practice that comment letters are only sent to one entity. The burden is on the agency and applicant to ensure that it has all written comments sent to either the agency or applicant.
	Public Review and Response Requirements for EAs	[thirty day] thirty day review period (or review period as otherwise statutorily mandated) review period, incorporate comments into the final	§ 11-200.1-20	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only "if any". There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343, HRS, does not be put in conflict with the provisions of another statute.
	Contents of a Final EA	(9) List of reasonably foreseeable required permits and approvals (State, federal, county) [required]	§ 11-200.1-21	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.
	Contents of a Final EA	or 11-200-15], and 30-day comment period (or other statutorily prescribed public review periods)	§ 11-200.1-21	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only "if any". There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343, HRS, does not be put in conflict with the provisions of another statute. Formatting will be reviewed and finalized by LRB.
	Notice of Determination for Final EAs	Recommend using FONSI and EISPN as the "notice".	§ 11-200.1-22	The proposed language applies the definitions and emphasizes that the FONSI and EISPN are determinations in a notice instead of documents themselves.
	Notice of Determination for Final EAs	Disagree with establishing a time limit of 30-days.	§ 11-200.1-22	This is an existing rules requirement that has not been a problem to date and was simply moved and revised to this section.
	Notice of Determination for Final EAs	Revise sections in 11-200.1-22 to remove the word "notice" and other wording changes. Procedural void after publication of an EISPN. Is there a challenge period?	§ 11-200.1-22	The proposed language applies the definitions and emphasizes that the FONSI and EISPN are determinations in a notice instead of documents themselves. There is no procedural void - follow the reference to section 23 for next steps.
	Consultation Prior to Filing a Draft EIS	Insert "reasonably foreseeable" before "required permits..."	§ 11-200.1-23	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.
	Consultation Prior to Filing a Draft EIS	Proposes changes to "EIS public consultation meeting"	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.
	Consultation Prior to Filing a Draft EIS	Recommend deleting "EIS public scoping meeting" or changing it to a consultation meeting.	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.
	Content Requirements; Draft EIS	Suggest deleting highlighted text. It is a disclosure not decision-making document? They provide the information relative to the environmental conditions but do not decide if a project is constructed. The language should be revised with that understanding.	§ 11-200.1-24	The language is existing language since 1996 so to identify it as contrary to Chapter 343, HRS, is a little late. Note the Findings and Purpose as stated in Section 343-1, HRS: "It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." For applicants in particular, the document is required to be prepared only for the purpose of decision-making on an approval. Therefore, it should have enough information for the decision-makers decision on the approval for which the statement is being prepared.
	Content Requirements; Draft EIS	This requirement seems to request a statement of the trigger.	§ 11-200.1-24	This item is for the draft EIS to identify the involvement of state or county lands or funds.
	Content Requirements; Draft EIS	Insert "reasonably anticipated" before "necessary approvals..."	§ 11-200.1-24	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Final Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.

Name	General Topic	Specific Comment	Rules Section	Response
	Content Requirements; Draft EIS	Choose to use "direct and indirect effects" or "primary and secondary effects" for consistency.(l)... 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	§ 11-200.1-24	These terms are defined as synonyms.
	Content Requirements; Draft EIS	The draft EIS shall include in a separate and distinct section [a description of] that describes all irreversible and irrevocable commitments	§ 11-200.1-24	The Council chose not to revise the wording.
	Content Requirements; Draft EIS	consultation period required in section 11-200-23A. If a number of comments are	§ 11-200.1-24	This comment addresses language that was in a previous version but not included in the Draft Proposed Rules or Final Proposed Rules.
	Content Requirements; Draft EIS	Responses to all substantive written comments made during the thirty-day consultation period	§ 11-200.1-24	This comment addresses language that was in a previous version but not included in the Draft Proposed Rules or Final Proposed Rules.
	Content Requirements; Draft EIS	Responses to all substantive written comments made during the thirty-day (or as statutorily prescribed) consultation period required in section 11-200A-23A.	§ 11-200.1-24	This comment addresses language that was in a previous version but not included in the Draft Proposed Rules or Final Proposed Rules.
	Public Review Requirements for Draft EISs	Public review shall not substitute for early and open discussion with interested persons. Is "open discussion" meant to mean early consultation, scoping, or public hearing?	§ 11-200.1-25	The Council believes the language is clear.
	Public Review Requirements for Draft EISs	Recommend using "published" instead of "issued": from the date that notice of availability of the draft EIS is initially issued published in the periodic.	§ 11-200.1-25	The Council adopted the recommendation.
	Public Review Requirements for Draft EISs	outside of the forty-five day comment period need not be [considered or] responded to	§ 11-200.1-25	This comment addresses language that was in a previous version but not included in the Draft Proposed Rules or Final Proposed Rules.
	Comment Response Requirements for Draft EISs	Insert "accepting authority" as this also relates to agencies.	§ 11-200.1-26	The Council revised the language to refer to section 25.
	Comment Response Requirements for Draft EISs	the forty-five-day review period.	§ 11-200.1-26	The statutes uses both "comment" and "review". For example, Sections 343-5(c) and (e), HRS, state: "The draft statement shall be made available for public review and comment through the office for a period of forty-five days." The Council believes the wording is clear.
	Content Requirements; Final EIS	Suggest deleting highlighted text. It is a disclosure not decision-making document? They provide the information relative to the environmental conditions but do not decide if a project is constructed. The language should be revised with that understanding.	§ 11-200.1-27	The language is existing language since 1996 so to identify it as contrary to Chapter 343, HRS, is a little late. Note the Findings and Purpose as stated in Section 343-1, HRS: "It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." For applicants in particular, the document is required to be prepared only for the purpose of decision-making on an approval. Therefore, it should have enough information for the decision-makers decision on the approval for which the statement is being prepared.
	Comment Response Requirements for Draft EAs and EISs	Insert "45-day": incorporate substantive comments received during the [consultation and] 45-day review processes in conformity with section 11-200A-26A, including reproduction of all...	§ 11-200.1-18, -26	This comment addresses language that was in a previous version but not included in the Draft Proposed Rules or Final Proposed Rules.
	Acceptability	OEQC acknowledges difficulty with completing actions within the 30-day time frame, so they should not place similar time constraints on agency actions.	§ 11-200.1-28	The proposed change is consistent with statutory language. Section 343-5(e), HRS, prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. The proposed change is so that OEQC may also have the same extension of time that agencies are able to have. The OEQC has the discretion to offer a recommendation to the agency and the proposed change allows for the recommendation to be within that 15 day extension.

Name	General Topic	Specific Comment	Rules Section	Response
	Acceptability	Recommend deletion of this section unless the same standard applies to agency actions submitted to "accepting authority" for review. If the "approving agency" has 30 days to accept applicant actions, then the "accepting authority" should be subject to the same requirement and conditions.	§ 11-200.1-28	This is existing language in the 1996 rules and is derived directly from Chapter 343, HRS, which states in 343-5(d) that, for agencies, acceptance is a condition precedent to implementation of the proposed action. It also identifies the accepting authority for an agency EIS to be the governor or mayor. Section 343-5(e), HRS, prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. Furthermore, the statute states that an applicant EIS is automatically deemed accepted after if the agency fails to accept or does not accept within 30 days. The statute makes a clear distinction in the acceptance timeline between agencies and applicants and the Council must work within the constraints of the statute.
	Supplemental EISs	11-200.1-30 Supplemental Environmental Impact Statements include an option for supplemental EAs.	§ 11-200.1-30	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The Green Sheet allows all factors, including a change in the project or anticipated impacts, leaning toward or against additional review, including at the EA level of review.
Mark Fox, The Nature Conservancy	General	Submitted written testimony; thanks the Council for its work and for undertaking a transparent process	n/a	Comment acknowledged.
Lee Sichter	Definitions	Requests a definition for the word "substantive".	§ 11.200.1-2	The Final Proposed Rules retain the word "substantial" from the 1996 Rules. Combining "substantial" and "adverse" is meant to set a standard that is higher than just having an effect and emphasizes that the focus is on negative effects rather than positive ones. Specifying a "loss ratio" (i.e., losing over 100 endangered birds) as the commenter suggests would be overly burdensome given that every action undergoing environmental review is different. The Final Proposed Rules and Chapter 343, HRS, do not set any particular threshold, recognizing that actions vary greatly across the different contexts of Hawaii. Each must be assessed on a case by case basis and what is appropriate for each will vary.
	General Types of Actions Eligible for Exemption	Listed versus eligible for register	§ 11-200.1-15(c)(6)	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
Marti Townsend, Sierra Club	General	Appreciate the process to date and Council effort.	n/a	Comment acknowledged.
	General Types of Actions Eligible for Exemption	Affordable housing concern about the potential for abuse.	§ 11-200.1-15	The Council has worded the language to enable agencies to apply the exemption within the context of their own decision-making on what is affordable housing. The Council is requiring agencies to publish lists of their exemption notices on a monthly basis to facilitate the public's review of exemptions. This list of exemption notices would include any exemptions made regarding affordable housing. The public would then be able to raise any concerns about the appropriateness of the exemption in a timely way.
	Significance Criteria	Concerned about replacing "may" with "likely to" "Some sections "may have a significant effect".....[as opposed to....] "likely to have a significant effect." That might seem like a very minor distinction, but it does put more of a burden on, people trying to demonstrate or raise concerns about environmental impacts. The language should not be "likely to have significant impact"	§ 11-200.1-13	The Council adopted the recommendation.
	Response to Comments	Recognize that Council is trying to improve how to handle batched comments with revisions in this draft from earlier ones.		Comment acknowledged.
Lori Lum, Airlines Committee of Hawaii	Definitions	Definition of EA: Concerned that the word "evidence" implies a legal standard	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.

Name	General Topic	Specific Comment	Rules Section	Response
David Arakawa, Land Use Research Foundation	General	Some EIS challenges are used as delay tactics. A common complaint is that project opponents use the EIS rules and technicalities to bring legal challenges and lawsuits to delay or stop projects, and new rules provide more litigation opportunities. This is a problem for certain stakeholders.	n/a	The Council acknowledges this concern. Legal challenges to exemptions, EAs and EISs, and deadlines to those challenges, are set forth by Chapter 343, HRS. The Final Proposed Rules are not intended to create new litigation points that are not otherwise authorized by statute.
	General	Unnecessary, duplicative and/or gratuitous changes. The majority of the current EIS rules work (no lawsuits); over 90% of the EIS' are "accepted;" the subject matter of some of the proposed changes are already addressed in the existing EIS law or rules; and the rationale for certain proposed changes are based on questionable "comments," which should not justify a rule change;	n/a	Comment acknowledged.
	General	New rule changes which include vague, subjective, unenforceable or unnecessary requirements will result in conflicting interpretations, more uncertainty, needless confusion and unnecessary litigation;	n/a	Comment acknowledged.
	General	Unintended negative consequences. These legal challenges result in increased costs and delays for needed infrastructure and housing projects;	n/a	Comment acknowledged.
	General	Unfair, one-sided and biased against agencies and applicants. Some of the proposed EIS rule changes do not address all relevant concerns in a fair and equitable manner.	n/a	Comment acknowledged.
	Purpose	It is impossible to impose an aspirational "spirit" requirement with vague and subjective terms. This proposed revision requires "consultation" that is "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."	§11-200.1-1(c)(3)	The Council considered comments related to this section and reworded it to require the agency to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language.
	Definitions	The proposed new "sufficient evidence" requirement is inconsistent with the current EIS law. The Chapter 343 does not require the presentation of "sufficient evidence." The current definitions in Chapter 343 are working, so there is no need to add more subjective wording. It's supposed to be an information document. "Evidence" is a legal term used in litigation; submittal and acceptance of evidence requires certain specific legal requirements that are not required of EAs or Chapter 343.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.

Name	General Topic	Specific Comment	Rules Section	Response
	General Types of Actions Eligible for Exemption; Historic Structures	<p>[8](6) Demolition of structures, except those structures [located on any historic site as designated in] that are listed on, or that meet the criteria of 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.</p> <p>The proposed rule would have unintended negative consequences: This rule could cause significant delays and obstacles in demolition of older structures. This vague, subjective and unenforceable requirement should be DELETED. The most reasonable and rational requirement is the existing rule, which allows an exemption for demolition unless the structure is on the national or Hawaii Register.</p>	§ 11-200.1-15	<p>The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".</p>
	Consultation Prior to Filing a Draft EIS; Scoping Meeting and Audio Recording	<p>The new requirement of public scoping meetings and audio recordings are inconsistent with Chapter 343. Chapter 343, already requires numerous opportunities for substantial public review and comment of environmental documents; already requires responses to the comments by agencies/applicant.</p> <p>Potential problems if there are multiple people speaking at once. No guidance on what happens if there are no oral comments. Not opposed to having oral comments, testimony, or recordings, and responses to oral comments, but does see an issue with raising those things to a level where your EIS could be legally challenged.</p> <p>The requirement to audio record oral comments should be REVISED to address the above-referenced comments and unintended consequences.</p>	§ 11-200.1-23	<p>The Council's intent is for audio recordings to be only for portions of the public scoping meeting that are dedicated to oral comments (one person at a time). The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that. The OEQC will maintain the recording of the oral comments on its website, as it does for EAs and EISs. The Final Proposed Rules are clear that oral comments do not need to be responded to -- only that a summary be provided in the draft EIS. The OEQC can also offer more guidance.</p>
Jennifer Lim	Use of Prior Exemptions, FONSI, or Accepted EISs	Suggests changing every instance of the term "proposed activity" to "proposed action"	§ 11-200.1-11	<p>The Council had intended to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program subject to Chapter 343, HRS. The Council recognized that "activities" may be outside the scope of the Council's authority as Chapter 343, HRS, is about actions and authorizes the Council to make rules about implementing Chapter 343, HRS. The Council therefore revised section 11-200.1-4 and section -11 to change all instances of "activity" to "action".</p>
	Significance criteria	Suggests adding proposed mitigation measures because they are taken into account when determining whether a proposed action is likely to have a significant effect on the environment	§ 11-200.1-13(b)	The Council adopted the recommendation.
Shannon Alivado, General Contractors Association of Hawaii	General; Intent	Legislative intent is that the EA and EIS are disclosure documents and wants Council to ensure they remain that way.	n/a	The term disclosure document is a good shorthand for what the statute prescribes, but it may not encompass the full intent. The rules have been reviewed and revised to carefully accomplish the purpose of the statute.
	Purpose	The purpose clause now provides that consultation requires mutual open and direct two-way communication in order to secure the meaningful participation of agencies and the public in the process. There should be, assurance that these dialogues are open and mutual and that they're not an extra added burden to the process.	§ 11-200.1-1(c)(3)	<p>The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.</p>

Name	General Topic	Specific Comment	Rules Section	Response
	Definitions	Problem with word "evidence"	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the proposing agency or approving agency about whether or not there is "significant environmental effect". The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.
	Consultation Prior to Filing a Draft EIS; EISPN	What if there are no oral comments at all? Then there is nothing to record?	§ 11-200.1-23(d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.
	Content Requirements; Final EIS	The most recent language includes language that suggest a summary analysis of impacts and alternatives considered and that technical language appears to require that this analysis, per se, is something more than a summary. Concerned that level of information required will become a burden.	§ 11-200.1-18 to § 11-200.1-27	The Council believes that the new language does not impose any greater requirements than what is requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language makes this explicit and clearer.
Teresa Nakama	N/A	Did not have time to review rules, wants to know how long people have to submit comments.	n/a	Comment acknowledged, question answered at the meeting.
Walter Ritte	Identification of Approving Agency and Accepting Authority; Preparation of EISs	Concerned that those preparing EIS's are not credible and do not understand the cultural significance of areas they are assessing.	§§ 11-200.1-7(e), 11-200.1-24, 11-200.1-26, 11-200.1-27	The statute does not have any requirements for certification of preparers. For sections dealing specifically with cultural resources, the State Historic Preservation Division has resources for hiring qualified professionals that EA and EIS preparers may rely on. The Office will resume conducting training of agencies, consultants, and the general public to assist in improving the adequacy of documents and the process.
	Significance Criteria	Wants subsistence activities protected in the EIS process via a separate and distinct section.  Brought 1994 Molokai Subsistence Task Force Report to show importance of subsistence economy on Molokai.	§ 11-200.13(b)	This is essentially a cultural practice. The rules do not define any other practices and it is not the place of the Council to define what is a cultural practice. To the extent subsistence activities are social, community, or economic impacts, these should be analyzed in the appropriate sections. The OEQC will be updating its 1997 Guidelines for Cultural Assessments, and clarify through guidance.
	Significance Criteria	Supports cultural impacts in significance criteria. Would like to see cultural analysis as a separate and distinction section.	§ 11-200.13(b)	Support acknowledged. The rules do not prescribe any impact method nor require a separate and distinct section for any particular impact. Practice evolves faster than rulemaking so best to include this in guidance.
	Significance Criteria	Supports including cumulative impacts in significance criteria. Concerned with how cumulative impacts are determined.	§ 11-200.13(b)	Impacts, as defined in the Rules and specified in significance criteria, necessarily includes direct, indirect and cumulative impacts. It is acknowledged that the practice of documenting and assessing cumulative impacts needs improvement. The OEQC will be addressing this in guidance and training.
	Content Requirements; Draft EIS; Comment Formatting/Batching	Against batching of comments.	§ 11-200.1.24	Some of the major revisions in the Final Proposed Rules involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as overwhelming the agency and/or applicant with identical comments that take advantage of the rules requirement to make the proponent spend an inordinate amount of effort on response. The revised language aligns with language in section 11-200.1-26 that changes the requirement to respond to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed.
	Content Requirements; Draft EIS; Comment Formatting/Batching	Supports scoping as part of the EIS process. Supports oral testimonies. A longer process helps alert the Molokai community to voice their concerns.	§ 11-200.1.24	Comment acknowledged.

Name	General Topic	Specific Comment	Rules Section	Response
	Content Requirements; Final EIS; Mitigation Measures	Concerned about ability to pay to degrade. Doesn't solve the problem.	§ 11-200.1-27	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The payment of fees can never in itself be considered an effective act of mitigation that excuses or compensates for impacts. In many cases, mitigation can effectively address impacts and solve long-standing, existing problems. If after mitigation the impacts are worse or have side effects, then these are impacts that must be disclosed.
	Types of Actions Eligible for Exemptions; Affordable Housing	Concerned about the affordable housing exemption and suggested possible unit limits.	§ 11-200.1-15(c)(10)	The Council has worded the language to enable agencies to apply the exemption within the context of their own decision-making on what is affordable housing. The Council is requiring agencies to publish lists of their exemption notices on a monthly basis to facilitate the public's review of exemptions. This list of exemption notices would include any exemptions made regarding affordable housing. The public would then be able to raise any concerns about the appropriateness of the exemption in a timely way.
Karen Holt	Significance Criteria	Cumulative impact are very important in the EIS process.	§ 11-200.13(b)	Comment acknowledged.
	Significance Criteria; Cultural Resources & Practices	Traditional cultural concerns over land and burial assessments must be adequate.	§ 11-200.13(b)	Comment acknowledged.
	General	Concerned about conflict of interest of applicants hiring their own consultants who write reports to support the applicant's desired outcome.	§ 11-200.1-27	Chapter 343, HRS, requires applicants to prepare their EAs and EISs, and the applicants in turn hire the consultants to prepare studies that inform the document. The process relies on the critical review of agencies and the public to ensure that the documents are not self-serving. To further emphasize this, the Council places the language about self-serving documents at the beginning of the Final Proposed Rules in section 1.
	General	Need to control development	n/a	Comment acknowledged.
	General	EIS is critical in protecting habitats and fisheries.	n/a	Comment acknowledged.
Carl Berg, Surfrider Foundation	Definitions	Definitions of projects and programs are too narrow and can restrict the scope of the actions.	§ 11-200.1-2	The proposed definition of project tries to give an operational meaning that distinguishes it from a program. Not everything government does falls under Chapter 343, HRS, otherwise there would be no need for the definition of action or the triggers.
	Definitions	The definition of mitigation is used in Chapter 343 as it is in NEPA	§ 11-200.1-2	The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.
	General; Objectivity in Preparation	Concerned that applicants have autonomy over providing the own EAs, EIS and making determinations on what constitutes substantial comments. The rules should ensure that the HRS Chapter 343 environmental review process is fair and objective – that the fox is not guarding the hen house, so to speak.	§ § 11-200.1-7, 11-200.1-12, 11- 20.1-14(d), and 11-200.1-20(c),	HRS Chapter 343 prescribes that the agency has responsibility for determining when Chapter 343, HRS, applies, what level of review to undertake, and if the law is satisfied at the end of the process. Unlike with NEPA, which provides for an agency to allow an applicant to prepare the document, Section 343-5(e), HRS, states that the agency requires the applicant to prepare the EA or EIS. This is why the rules address the applicant. The agency is responsible for deciding if the applicant has met the standard for sending the draft EA or EIS out for public comment and issuing a FONSI or acceptance. In turn, agencies are the entities that are the objects of judicial appeal. It is in their interest to ensure that the information is accurate and complete.
	Types of Actions Eligible for Exemptions	Concerned revisions to exemptions allow for greater use of exemptions and are vague.	§ 11-200.1-15	This language has been retained from the original rules in section 11-200-8. Aside from the important point that it has in general worked, it is not possible to attain crystal clarity on the exact boundary between which actions should be exempt and which should be not for the entire, exceedingly numerous and diverse actions that government must undertake or approve as a matter of course. Common sense discretion must be given. The new procedures on publishing lists of exemption notices will give the public a greater opportunity to determine if exemptions were properly applied.
	Supplemental EISs	Rules clearly and adequately describe when supplemental EISs are required – there are several triggers that need to be written more clearly.	§ 11-200.1-30(a) and (b)	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The OEQC can issue better guidance on those sections.
	Use of Prior Exemptions, FONSI, or EISs	Concerned this section is too broad.	§ 11-200.1-11	The 1996 Rules allowed for use of prior determinations and accepted EISs to satisfy Chapter 343, HRS, requirements. The Final Proposed Rules continue to allow this use and clarify how and when a prior determination or document may be used.
	Significance Criteria	Wants sea level rise included in the criteria.	§ 11-200.13(b)	Comment acknowledged, sea level rise is included in the criteria in the Final Proposed Rules.
	NEPA Applicability to HEPA	More stringent review shall prevail.	§ 11-200.1-31(6)	Comment acknowledged.

Name	General Topic	Specific Comment	Rules Section	Response
Rayne Regush	Comment Responses	Supports greater specificity regarding the mailing of responses from preparers to commenters, so commenters can expect a response sent to them before the final EA or EIS is published and not have to look for the final to track down their comment response.	§§ 11-200.1-7(e), 11-200.1-24, 11-200.1-26, 11-200.1-27	The Council believes it is not onerous to monitor <i>The Environmental Notice</i> for publications, as it is the official publication record of actions undergoing environmental review. Individuals may sign up for the OEQC's mailing list and twice a month check the table of contents of the bulletin for actions they may be concerned about. The OEQC can also develop guidance on notifying commenters.
Jean Souza	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Proposing and accepting agency should not be the same as there is greater risk for inaccurate, biased assessments.	§ 11-200.1-7	Chapter 343, HRS, establishes that the proposing agency determines the applicability of Chapter 343, HRS, and the level of review to undertake, including when to do an EIS. Once it determines an EIS is required, the political leader (governor or mayor) of that agency is the accepting authority. The rules are constrained by the statute's framework. Because agencies are the entities that are the objects of judicial appeal, it is in their interest to ensure that the information is accurate and complete.
Eileen Kechloian	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Proposing and accepting agency should not be the same.	§ 11-200.1-7	Chapter 343, HRS, establishes that the proposing agency determines the applicability of Chapter 343, HRS, and the level of review to undertake, including when to do an EIS. Once it determines an EIS is required, the political leader (governor or mayor) of that agency is the accepting authority. The rules are constrained by the statute's framework. Because agencies are the entities that are the objects of judicial appeal, it is in their interest to ensure that the information is accurate and complete.
Bridget Hammerquist, Friends of Mahaulepu (First)	Significance Criteria	Concerned that the significance criteria revision from "may" to "likely" would raise the threshold for requiring an EIS. The Council should look to more recent court cases instead of the one from 2005. Also, to say that a significant impact is "likely" implies some level of study already done.	§ 11-200.1-13	The Council adopted the recommendation.
	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Concerned that the agency or private applicant doing a project should have an accepting authority unrelated to them. Meetings should be conducted by someone unrelated to the proposer.	§ 11-200.1-7	The statute prescribes that the proposing agency makes its own determination about whether to prepare an EIS and that, if an EIS is to be prepared, the governor or mayor is the accepting authority. The statute allows for the Governor or Mayor to designate an authorized representative, which could be the proposing agency. In the case of applicant EISs, the statute generally assigns accepting authority responsibility to the approval agency.
Allan Rachap	Significance Criteria	Concerned that the significance criteria revision from "may" to "likely" would raise the threshold for requiring an EIS.	§ 11-200.1-13	The Council adopted the recommendation.
	General; Objectivity in Preparation	Concerned about who makes the determination that an impact is significant. Agencies and applicants can say they don't have impacts. Consultants backup clients with long reports that justify what the client wants.	§ 11-200.1-7	The statute prescribes that the proposing agency makes its own determination about whether to prepare an EIS and that, if an EIS is to be prepared, the governor or mayor is the accepting authority. The statute allows for the Governor or Mayor to designate an authorized representative, which could be the proposing agency. In the case of applicant EISs, the statute generally assigns accepting authority responsibility to the approval agency.
David Hinazumi, Grove Farm Company	Purpose	Concerned that the purpose section adds the phrase "secure a meaningful participation" as being subjective and that if one side is not cooperative then it is impossible to satisfy this purpose	§ 11-200.1-1	The Council considered comments related to this section and reworded it to require the agency or applicant to "make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the rules and understands the concerns with aspirational language. The Council's intent is that this language remain aspirational.
	General Types of Actions Eligible for Exemption	The exemption language for demolition of structures that are eligible for listing.	§ 11-200.1-15	The Council reviewed various comments on this issue and acknowledges that the only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies who may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on".
Jesse Brown-Clay	General Types of Actions Eligible for Exemption	Concerned about exemptions are determined and whether the rules are loosening the standard for exemption.	§ 11-200.1-15	The Council is not changing the standard for what can be exempted but is making a new requirement for agencies to publish lists of exemption notices on a monthly basis so that the public can be informed about appropriate exemptions during the 120 day challenge period.

Name	General Topic	Specific Comment	Rules Section	Response
	General; Consultation Prior to Filing a Draft EIS	Example of Kauai Landfill EIS where at the public meeting the consultants would only take questions in writing and those questions would be responded to in the EIS.	§ 11-200.1-23	The proposed rules would formalize the writing aspect of public meetings to ensure that the commenter's intent is in the commenter's own words and that the response in the EIS is so that everyone has access to the comment and response. The project also includes a required scoping meeting for EISs, in which all oral comments done during the portion of the meeting set aside for oral comments would be recorded, and the recording included as part of material filed with the EIS. This does not preclude project proponents from engaging in dialogue and more outreach; it sets a minimum. The Council also added language to the purpose section on how outreach should be conducted.
	Consultation Prior to Filing a Draft EIS	Frustrated with lack of transparency and outreach; request more robust public outreach and education, using online technology more, especially to engage young people	§ 11-200.1-23	The Final Proposed Rules have several provisions to improve transparency and outreach - publishing exemption determinations, requiring scoping meetings, shifting to electronic submittals and communication. Other aspects such as engaging young people more can be done through the OEQC as guidance and practice.
	Consultation Prior to Filing a Draft EIS	Public processes should include the ability to answer questions in meetings.	§ 11-200.1-23	Under the 1996 rules, scoping meetings are optional. The Final Proposed Rules require a scoping meeting for an EIS to be held. While the scoping meeting will require written questions to be responded to in the EIS, it does not preclude project proponents from engaging in more meaningful dialogue. Ultimately, it is up to the accepting authority to set the level of engagement it expects from the proponent.
Timothy Reis	General	Didn't really know what the meeting was about, heard it was about EIS rule changes and wanted to share some thoughts regarding the existing process. Re cultural issues for rocks – wants ground penetrating radar implemented as a requirement for all development. Long history of sacred sites being demolished in plantation areas, valleys. Concern with sacred sites being built on. Wants archaeologists to consider when rocks don't look like they're from a certain place; maybe tools. Heiau are built from specific stones. Also concerned about the pueo and why it wasn't listed as endangered. Need to consider habitat. Concern with drilling wells in areas that don't have water – should need to do an impact statement to identify springs that would be affected. It affects things that are important to Hawaiian culture and people who call Hawaii a home.	n/a	Comments acknowledged. Depending on the context, a variety of data gathering methods may be appropriate, and the Rules are not meant to provide technical specifications for scientific studies. Impacts to named resources (among others) are considered in the Chapter 343, HRS, process.
Felicia Cowden	General; Process	Lack of trust in the process (e.g., EISs for Mauna Kea and Hawaii Dairy; challenges to pesticides). Concerned with wording shifts or changes that might change threshold of accountability. Concerned about the fox guarding the hen house.	n/a	The Proposed Rules have several provisions to improve transparency and outreach - publishing exemption determinations, requiring scoping meetings, shifting to electronic submittals and communication. Chapter 343, HRS, prescribes that the agency has responsibility for determining when Chapter 343, HRS, applies, what level of review to undertake, and if the law is satisfied at the end of the process. Unlike with NEPA, which provides for an agency to allow an applicant to prepare the document, Section 343-5(e), HRS, states that the agency requires the applicant to prepare the EA or EIS. This is why the rules address the applicant. The agency is responsible for deciding if the applicant has met the standard for sending the draft EA or EIS out for public comment and issuing a FONSI or acceptance. In turn, agencies are the entities that are the objects of judicial appeal. It is in their interest to ensure that the information is accurate and complete.
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Concerned that the changes in commenting shift the burden of responsibility.	§§ 11-200.1-20, -23, -26	Re batched comments: Some of the major revisions in the Final Proposed Rules involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as comment bombing. Revised language aligns with language in section 11-200.1-26 that changes the requirement to respond to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed. Furthermore, the proposed rules make clear that the accepting authority must make its own decision about whether the proposing agency or applicant properly identified all substantive comments and responded to them commensurately.
	Significance Criteria	Issue with the significance threshold of "likely to" - needs to be fixed.	§ 11-200.1-13	The Council adopted the recommendation.

Name	General Topic	Specific Comment	Rules Section	Response
Hope Kalai	General; Public Review and Comment Response Requirements for EAs and EISs	Community shouldn't be batched into one comment consideration. Everyone's comments/words are different. Impacts to culture, trail access, open space, water, etc. needs to be considered. If you weaken the process, it'll get worse. Don't lessen community voices. Endangered species need to be considered. Concerned with houses being built in lo'i.	§§ 11-200.1-20, -26	Re batched comments: Some of the major revisions in the Final Proposed Rules involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as comment bombing. Revised language aligns with language in section 11-200.1-26 that changes the requirement to respond to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed. Furthermore, the proposed rules make clear that the accepting authority must make its own decision about whether the proposing agency or applicant properly identified all substantive comments and responded to them commensurately.
Vivien Davenport	General; Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	The process is built not hear our comments. Does not like that the rules are only available via PDF file – unable to copy and paste certain parts. Wants a word copy so that comments can more easily be given. Wants community meetings where people are able to ask questions and for people to come back if questions cannot be answered right away. Process is set up only for people with email and PDF access – not farmers, Hawaiians, those with language barriers.	§§ 11-200.1-20, -23, -26	Comment acknowledged. The OEQC is requiring preparers to submit documents that are searchable. Documents should be able to be copied and pasted to facilitate communication and OEQC will work on this. For the Council's rulemaking process, the draft rules have been made available via PDF which can be converted to Word or copied and pasted, as well as uploaded to CiviComment for submitting comments directly onto the document.
Ken Taylor	General	No specific comments on the rule section.	n/a	Comment acknowledged.
Bridget Hammerquist, Friends of Mahaulepu (Second)	Definitions	Request good, clear definitions for project, action, and mitigation. My written comments will make suggestions on meaningful clear definitions.	§ 11-200.1-2	Chapter 343, HRS, defines "action" and the Council is staying consistent as much as possible with the wording from the statute. The Council has made revisions in the Final Proposed Rules to project and program for clarity. Mitigation is essentially defined in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.
	Notice of Determination for Draft EA	An agency finalized an EA and submitted the FONSI for publication to the OEQC one day after the close of the public comment period. Please give effect to the 30-day comment period in the rules. If the FONSI is issued immediately after the comment period, then inferentially the agency did not give the comment much consideration. Add to the rules some evidence that the applicant has taken the comments into consideration.	§ 11-200.1-19	Chapter 343, HRS, gives responsibility to agencies to submit EAs to the OEQC for publication. An agency is assuming its own risk in submitting a final EA and FONSI the next day after a comment period. There is the chance that a commenter's letter may arrive afterward but still be timely submitted so long as it is postmarked by the close of the comment period. Should that occur, the commenter would have to file in court that the agency violated the process. On the other hand, there are EAs that receive few to no comments and an agency may appropriately move to final after the close of the comment period.
Susan Strom	Public Review and Response Requirements for Draft EAs	Concerned that subsection (c) is amended to provide that the proposing agency or applicant may deem whether comments are substantive vs. non-substantive in deciding whether a response is needed.	§ 11-200.1-20(c)	This section incorporates language from the comment response requirements for EISs in section 11-200.1-26 providing guidance on how to discern substantive from non-substantive comments. By differentiating between these types of comments and allowing for grouping of comment responses, the proposed rules intend to modernize and simplify the environmental review process.
Lynn McCrory, Pulama Lanai	General	Support encouraging and requiring greater public access and interaction with the public	n/a	Comment acknowledged.
	Definitions	The differentiation between project and program is a major difference that helps to think about what do and how to do it	§ 11-200.1-2	Comment acknowledged.
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Responding to substantive comments and chain letters saves time.	§§ 11-200.1-20, -23, -26	Comment acknowledged.
	NEPA Applicability to HEPA	Federal entity issuing an exemption or FONSI and the state or county agency can include that in its decision is major. The federal process takes a lot of work and often more than the state or county requirements.	§ 11-200.1-31	Comment acknowledged.

Name	General Topic	Specific Comment	Rules Section	Response
Gabe Johnson	General	Changes to the rules should help us with realizing the responsibilities for the public trust doctrine in our state constitution. The changes should not make our EIS law weaker.	n/a	Comment acknowledged.
Tamara Paltin	Definitions	Requested the rules to define "mitigation" and add requirements to make sure that mitigation works.	§ 11-200.1-2	The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.
	Use of Prior Exemptions, FONSI, or Accepted EISs	The use of prior exemptions should go through public notice and comment.	§ 11-200.1-11	This section clarifies how and when an agency may determine that a prior exemption, final EA or accepted EIS satisfies chapter 343. The proposed rule intends to create a consistent process modeled on the "Green Sheet" example and provide agencies with direction on what to consider when determining if a proposed activity is covered under a prior exemption, final EA, or accepted EIS. The current rules encourage agencies to publish notice of these determinations but do not require it.
	General Types of Actions Eligible for Exemption	Does not want to see exemptions for reconstruction or renovation of grandfathered structures such as seawalls.	§ 11-200.1-15	Exemptions are explicitly designated in this section as not appropriate when their impact on the environment may be significant in a particularly sensitive environment. To ensure public review, the Council included in the Final Proposed Rules a requirement that agencies submit their exemptions every month to the OEQC for publication to the public. That way, the public may be able to monitor if an inappropriate exemption such as for a seawall has been issued.
	General Types of Actions Eligible for Exemption	Put a unit limit in the exemption for affordable housing.	§ 11-200.1-15	The Council has worded the language to enable agencies to apply the exemption within the context of their own decision-making on what is affordable housing. Adding a new and separate limit based on unit will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas.
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Require substantive responses to each substantive comment.	§§ 11-200.1-20, -23, -26	This is in the Final Proposed Rules.
	Supplemental EISs	Make new information about impacts of an action trigger a supplemental EIS.	§ 11-200.1-30	This is the current standing interpretation based on Hawaii case law (Turtle Bay). The Council has not proposed changes to the supplemental EIS sections.
	Supplemental EISs	EISs need a five-year shelf life if no construction is begun or completed.	§ 11-200.1-30	When the Council introduced the NEPA concept of a 5-year re-evaluation period for EISs, stakeholders for and against the proposal read that as an automatic "shelf life" of the EIS where a supplemental EIS would automatically be required after 5 years. The Council did not propose an automatic shelf life of any period because the Chapter 343, HRS, process is based on impacts not arbitrary time limits, so the Council withdrew the re-evaluation concept from subsequent revisions in order to refine it. While doing so, members of the public recommended the Council integrate the City and County of Honolulu Department of Planning and Permitting (DPP) practice of the "Green Sheet", which is DPP's way to track Chapter 343, HRS, compliance for actions moving through DPP's permitting process. The Green Sheet allows all factors, including a change in the project or anticipated impacts, leaning toward or against additional review, to be considered and tracked through a formal, internal process. The Council deferred making edits to the supplemental EIS sections but did introduce section 11 as a means to promote good practice such as DPP's Green Sheet.
	Significance Criteria	Remove the language of "likely" for the significance criteria.	§ 11-200.1-13	The Council adopted the recommendation.
	Retroactivity	Clarify when the rules will take effect and what happens to old EAs and EISs or partially done when the new rules take effect.	§ 11-200.1-32	Section 11-200.1-32 addresses the transition. In brief, any EA or EIS that has gone to the public as a draft or EISPN will remain under the 1996 Rules, as well as any completed EIS for supplemental EIS purposes.
	Significance Criteria	Include sea level rise based upon the best available scientific data in deciding whether to exempt something.	§ 11-200.1-13	The significance criteria include the sea level rise exposure area as a reason to not allow an exemption or to require an EIS. All impacts analyzed in an EA or EIS should be based upon the best available scientific data. Maps for the sea level rise exposure area should also be included in EAs and EISs where applicable.
Jim Buika	General	Nothing is defined. Need a prescriptive analysis of the environmental process drainage, what do you need, how do you do it--a checklist.	n/a	The Final Proposed Rules include definitions for those terms that are necessary for purposes of these rules. The Final Proposed Rules have been reorganized in a way so that the order of the rules follows generally the chronological process. In this manner, the rules act as a checklist. OEQC guidance may later include a checklist, but the Council recognizes that what is appropriate or required for one action may not be for another.
	Significance Criteria	For archaeology, you cannot say culture resources and archaeology, you need to go to SHPD and have a long, 2-3 pages of checklists.	§ 11-200.1-13	The review process under Chapter 343, HRS, is structured somewhat as a checklist. While other jurisdictions may treat environmental review documents as checklists, Hawaii's process is not structured so rigidly. The process under Chapter 343, HRS, and the Final Proposed Rules allow for flexibility, recognizing unique circumstances and environments and that what is appropriate for one project may not be for another.

Name	General Topic	Specific Comment	Rules Section	Response
	Significance Criteria	For shoreline, the views, rules need to describe the analysis, what you need. There needs to be more guidance on what is required due to the lawsuits challenging the sufficiency of documents.	§ 11-200.1-13	The Final Proposed Rules and new guidance that will be issued by OEQC are intended to provide the necessary guidance to the public and document preparers. The Final Proposed Rules serve as guidelines and are not intended to prescribe any one way of performing an analysis. Practice evolves faster than rulemaking.
	Significance Criteria	Wants 5 pages of mitigation measure and what is meant by mitigation measures, including a detail of every step, not a summary description of the affected environment.	§ 11-200.1-13	The Council has declined to definite "mitigation" at this time. The mitigation hierarchy is expressed in section 11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The Council recognizes that what is appropriate mitigation for specific actions will be determined on a case-by-case basis.
	n/a	Wants a list of every certified citizen group in the state.	n/a	Neither the Council nor OEQC keeps this information and the Council is unaware if such information exists. It is unclear what type of certification the commenter is requesting but the Council notes that citizen groups do not need to be certified in order to participate in the Chapter 343, HRS, process.
	n/a	Include a list of every single agency and where to find their regulations and contact information.	n/a	The Council does not find a need for including such information in the Final Proposed Rules, however, a list of all state agencies can be found on hawaii.gov with links to the agencies. Each county also has its own websites with this information.
	General	Lots of procedural information in the rules but wants more than a general description of the guts of the EIS. Rules need to be prescriptive.	n/a	The Council acknowledges the desire for this comment but also recognizes that not all Chapter 343, HRS, documents will look the same and will change based on the particular action and area in which an action is proposed. The Final Proposed Rules allow for flexibility to address specific circumstances, for both the process of completing a Chapter 343, HRS, document and its substantive requirements.
	n/a	The EIS process is killing the environment because you cannot do anything on the shoreline. What agency should I report condos falling into the ocean? That information should be in the rules.	n/a	The Council respectfully disagrees with the characterization of the EIS process in this comment. Chapter 343, HRS, and its implementing rules are intended to disclose the potential impacts of actions, not to address or resolve any specific issue.
	Significance Criteria	EIS must be prescriptive in detail, must address archaeology, drainage, view plane, shoreline access, runoff sediment.	§ 11-200.1-13	The environmental review process is not prescriptive. It is an information disclosure document that incorporates public feedback. It is not a permit like a Special Management Area Permit or Conservation District Use Permit. Much of an EA or EIS is tied to the potential for impact.
	n/a	There are no shorelines that have local people living there. We've lost a lot of views due to development. Need more prescriptive view plane regulations. Grading should be allowed to bring down the grade and vegetation so as not to block views along the highway.	n/a	The environmental review process is not meant to be prescriptive. The documents produced through this process are information disclosure documents that incorporate public feedback. It is not intended to be a permit approval process (like a Special Management Area Permit or Conservation District Use Permit). The information in environmental review documents is tied to an action's potential for impact. Other statutes and agencies' regulations address these issues in the manner suggested by the commenter.
	Definitions	Define social impacts, what happens to the watershed, reefs offshore.	§ 11-200.1-2	The Council has declined to define any particular impacts as the specific impacts of actions will vary greatly depending on the specific project and project location. The Final Proposed Rules require that impacts to affected resources, including those suggested by this comment, be addressed in the environmental review document.
		When someone does an EA or EIS, it should be a guide.	n/a	The Final Proposed Rules and OEQC guidance provide the necessary guidance in drafting environmental review documents.
	Definitions	Social welfare, culture, and cultural practices should also be defined.	§ 11-200.1-2	The Council has declined to define these terms as doing so may run the danger of being under inclusive in some situations over inclusive in others.
	Definitions	The definition of cumulative impact needs to be more prescriptive.	§ 11-200.1-2	The Council believes that the definition in the Final Proposed Rules is sufficient and has declined to make any further amendments.
	Challenges	Rules need to be lawsuit proof.	n/a	The Council cannot guarantee that the rules are lawsuit proof. Chapter 343, HRS, relies on citizen suits to enforce its provisions. The Final Proposed Rules encourage proposing agencies and applicants to make good faith efforts at public engagement and that the documents should not be self-serving advertisements.
	n/a	Need an e-permit system.	n/a	Chapter 343, HRS, does not authorize any particular permits. The Chapter 343, HRS, process results in a disclosure document setting forth the anticipated impacts of an action. Chapter 343, HRS, documents do not authorize actions, therefore addressing an e-permitting system through the rules is likely beyond the scope of the Council's authority. The Council is aware that some state and county agencies do have e-permitting systems available.