



STATE ENVIRONMENTAL COUNCIL

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Environmental Council Rules Committee Meeting

June 13, 2017, 10:00-11:00 AM

Meeting Location – Office of Environmental Quality Control
235 S. Beretania Street, Suite 702, Honolulu, HI 96813

Agenda

1. Call to Order, Roll Call, Introductions, Quorum
2. Proposed language from PIG amending Hawai'i Administrative Rules (HAR) Chapter 11-200 to include a new section on Programmatic EIS (see attachment for current proposed language) (Exhibit 1).
3. Proposed language from PIG on amending §11-200-27 Determination of Applicability related to supplemental EIS requirements, including a new term in the definitions section "substantially commence" (Exhibit 2).

Note: Public comments will be accepted on each agenda item prior to voting or completion of the agenda item.

Note: The Council may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a), Hawaii Revised Statutes ("HRS"), without noticing the executive session on the agenda where the executive session was not anticipated in advance. The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded and entered into the minutes of the meeting. HRS Sections 92-4, 92-5(a) and 92-7(a).

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Exhibit 1. Proposed language for Programmatic Environmental Impact Statements

Proposed Definition of Programmatic EIS

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

§ 11-200-____. Programmatic Environmental Impact Statements. (a) Agencies may prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the programmatic EIS may require no or limited further review.

(b) Applicants may prepare a PEIS on the adoption of a comprehensive plan prepared in accordance with relevant laws and approved by the Approving Agency. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the programmatic EIS may require no or limited further review.

(c) Upon acceptance of a final programmatic EIS:

(1) If a PEIS evaluates project-level issues such as precise project footprints or specific design details, no further compliance with this chapter is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the PEIS.

(2) A supplement to the PEIS must be prepared if a subsequent proposed action was not addressed in the PEIS or the subsequent proposed action exceeds the thresholds evaluated in the PEIS, and the subsequent action may have a significant impact on the environment. A supplement can be in the form of an EIS, EA, or exemption, for specific components of the proposal.

§ 11-200-____. Content Requirements; Draft Programmatic Environmental Impact Statement.

The content requirements for a PEIS shall be the same as those for an EIS set forth in §§ 11-200-16, -17, and -18, with the understanding that the level of detail in a PEIS may be less than that of a project level EIS. The level of detail in a PEIS must be sufficient to allow informed choice among planning-level alternatives and to develop broad mitigation strategies. A PEIS should examine the interaction among proposed projects or plan elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also includes a "no action alternative."

The PEIS may be broader and more general than a project EIS and omit evaluating project-level issues that are not yet ready for decision at the planning level, or it may evaluate project-level issues such as precise project footprints or specific design details.

A PEIS should discuss the logic and rationale for the choices advanced. It may also include an assessment of specific impacts if such details are available and specific mitigation measures. It may be based on conceptual information in some cases. It may discuss in general terms the constraints and sequences of any narrowing of future options. It may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur.

Exhibit 2. Proposed language for "substantial commencement":

"The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. If a period of five years has elapsed since the acceptance of the final EIS, and the project or program has not substantially commenced, the accepting authority or approving agency shall formally re-evaluate the need for a supplemental statement and make a determination of whether a supplemental statement is required. A written summary of this evaluation and the determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

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