

From: [Douglas Le](#)
To: [DBEDT OPSD Environmental Review Program](#)
Subject: [EXTERNAL] Testimony for Item #4 EAC Rules Update and Discussion (11/13/2025)
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Attachments: [Douglas Nam Le - EAC Testimony 11.13.2025.pdf](#)

Aloha,

I am submitting written testimony for Item #4 EAC Rules Update and Discussion on the agenda for the November 13, 2025, meeting of the Environmental Advisory Council.

I also plan to participate virtually via Zoom to provide oral testimony at the meeting. I will follow the information provided in the meeting agenda to do so.

Mahalo,
Douglas

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November 10, 2025

Members of the Environmental Advisory Council,

I submit this testimony regarding Item 4. on the Council's agenda for its November 13, 2025, meeting to discuss proposed rule amendments for adoption. I provide these comments as a private citizen with experience working in urban planning and environmental policy.

The proposed amendments, which will replace H.A.R. Chapter 11-200.1 with Chapter 15-20, represent the first significant update since the prior rules under H.A.R. Chapter 11-200 were overhauled by the predecessor Council on Environmental Quality in 2018. The drafting and proposed adoption of H.A.R. Chapter 15-20 aim to amend these rules in response to Act 152 of the 2021 Session Laws of Hawai'i. Act 152 created the Environmental Advisory Council when the law transferred the authority, duties, and resources of the Council on Environmental Quality and State Environmental Review Program from the Department of Health to the Office of Planning and Sustainable Development.

When the Legislature debated and subsequently enacted Act 152, a specific purpose was to amend H.R.S. Chapter 341 to allow for an applicant to appeal the nonacceptance of an environmental impact statement to the State Environmental Court instead of the Council. Based on the legislative history for Act 152, the Legislature sought to shift this authority to hear appeals because it felt that the Council was not proficient to function as a quasi-judicial body due to a lack of resources, equipment, and staffing. Furthermore, the Legislature articulated that any determination of the sufficiency of an environmental impact statement properly lies with the technical experts at the relevant agencies reviewing those documents, and not the Council.

I **support** the amendment for § 15-20-29 which repeals this section of the rules (currently H.A.R. § 11-200.1-29) regarding the procedure to appeal the non-acceptance determination of an environmental impact statement by an agency to the Council. *Further, I would recommend the Council publish clarification that the jurisdiction to appeal a non-acceptance determination rests with the State Environmental Court.*

Rulemaking serves important purposes for the functioning of our State and county agencies under H.R.S. Chapter 91. I would like to highlight two with respect to the proposed rule amendments the Council considers. First, applicants for environmental review actions and the agencies charged with making determinations on whether to accept these disclosure documents need to understand their due process rights in this system. Both parties to an environmental review are likely to be sophisticated in terms of the application of State laws and administrative rules. They often have the privilege of technical advisors and legal counsel to represent them. Still, a purpose of administrative rules is to clearly delineate these rights and how they are properly adjudicated. Second, members of the public with interest in environmental review actions are entitled to know where authority lies if an applicant appeals the non-acceptance of an environmental impact statement. A public that is informed about how determinations not to accept an environmental impact statement may be challenged can better participate in the environmental review process overall.

This clarification on the jurisdiction of the State Environmental Court to take up appeals could be accomplished expressly in these administrative rules. If the Council determines that rulemaking is not the appropriate approach in providing procedural guidance to applicants and members of the public, then the Council should consider how to achieve this through the exercise of its functions within the Office of Planning and Sustainable Development under H.R.S. § 225M-2(b)(11) with regard to environmental review: advising and assisting private industries, government department and agencies, and other persons on the requirements of H.R.S. Chapter 343; and conducting public education programs on environmental quality control.

I also want to express my **support** for other amendments which effectively detail agency procedures and facilitate public participation in the environmental review process. Specifically:

- The amendment for § 15-20-1 that emphasizes the central effect of *disclosure* through the environmental review process in the State of Hawai‘i, as well as other jurisdictions. This amendment may address assumptions about the possibilities and limits of an environmental review process when parties contest its procedures, findings, determinations, or outcomes.
- The amendment for § 15-20-5 to specify that all electronic documents submitted must also be accessible in compliance with the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*). This is critical to ensuring that all people in Hawai‘i are able to access information for and participate in the public comment process of environmental reviews.
- Amendments to explain when an applicant or agency can “withdraw” or “rescind” submitted documents proposed for § 15-20-2 and § 15-20-5(d) and (e) help to clarify the procedures for all parties in the environmental review process.
- Amendments for § 15-20-_(10) (currently H.A.R. § 11-200.1-5(e)(10)) and § 15-20-6(a) which provide procedures for an additional public comment period when a changed version of a notice, document, or determination is published or republished will be useful in terms of providing clear direction to applicants and agencies in this circumstance. These amendments further the involvement of the public in applications that may face changes during the environmental review process.
- The amendment for § 15-20-24(11) proposing a new requirement that the text of a Final Environmental Assessment must present changes made from the Draft Environmental Assessment in such a way that a reader can easily distinguish changes made to the text. This directly benefits members of the public with interest in the action.
- Amendments for § 15-20-27(e) and § 15-20-30(b)(5) proposing a new requirement for a table indicating where all the content requirements for Draft and Final Environmental Impact Statements are located within the respective documents. These amendments will facilitate clear and accurate review of disclosure documents by agencies and the public.

Mahalo for your efforts to update the H.A.R. to better facilitate the work of Office of Planning and Sustainable Development and the Council with government agencies and the public. I appreciate your consideration of this testimony.

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