

# Report of the Environmental Council Permitted Interaction Group

## Preliminary Draft of Proposed Revisions to Hawai'i Administrative Rules Title 11 Department of Health Chapter 200 Environmental Impact Statement Rules

1 Prepared for the July 27, 2017 Environmental Council Meeting

2 Prepared by the Environmental Council Permitted Interaction Group established on February  
3 23, 2016, with the support of the Office of Environmental Quality Control. The Permitted  
4 Interaction Group members are: Scott Glenn, Onaona Thoene, Ron Terry, and Mahina Tuteur.  
5 Deputy Attorney General Diane Agor advised the Permitted Interaction Group.

### 6 **Background**

7 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter  
8 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled  
9 in 1996. An amendment to add an exemption class for the acquisition of land for affordable  
10 housing was added in 2007, although it has not been compiled with the rest of the rules.

11 In 2011, the public formally petitioned the Environmental Council (Council) to update HAR  
12 Chapter 11-200. The Council initiated consultation with state and county agencies for  
13 recommendations on issues to address and language revisions. In 2012, the Council released a  
14 preliminary draft of revisions to HAR Chapter 11-200 (referred to as "Version 1") that  
15 incorporated proposed revisions from previous Council efforts and issues raised by agencies  
16 and the public. The Council also distributed an Excel file called a "comment matrix" to receive  
17 feedback on Version 1. Agencies and the public (including applicants, consultants, and nonprofit  
18 organizations) submitted comments via the comment matrix. The Council organized the  
19 feedback into a master comment matrix and tasked the Rules Committee with addressing the  
20 feedback and making revisions to the language. The Rules Committee met regularly over the  
21 course of 2012-2014 to revise Version 1. However, due to various administrative challenges,  
22 including maintaining quorum, the Council was not able to complete its work.

23 In February 2016, following Governor Ige's appointment of seven members to the Council, the  
24 Council addressed its challenges and resumed moving forward on revisions to HAR Chapter  
25 11-200. As part of this effort, the Council wanted to recognize the extensive outreach and  
26 drafting that the 2012 Council conducted.

27 At the February 23, 2016 Council meeting, the Council established a Permitted Interaction  
28 Group (PIG) to draft revisions to HAR Chapter 11-200. The PIG was to investigate and consider

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1 specific language for inclusion in HAR Chapter 11-200, which would not be for the purpose of  
2 decision making, but to be brought to the Rules Committee for its consideration and decision  
3 making to make recommendations to the EC.

4 **Permitted Interaction Group Principles**

5 The PIG drafted language within the principles established by the Council:

- 6 ● Be consistent with the intent and language of Hawai'i Revised Statutes Chapter 343.
- 7 ● Align statute, case law, and practice wherever feasible.
- 8 ● Increase clarity for the process and requirements.
- 9 ● Use the National Environmental Policy Act for language and guidance where applicable.

10 **Permitted Interaction Group Process**

11 Following the Council's establishment of the PIG, the PIG set a monthly or biweekly meeting  
12 schedule to review the previous Council work. The PIG reviewed the 2012 draft rules language,  
13 public comments in the comment matrix the 2012 Rules Committee produced, and responses to  
14 the public comments that the Rules Committee developed over 2012-2014. The PIG  
15 categorized the comment matrix into two groups: 1) comments resolved and direction provided  
16 and 2) outstanding comments still needing policy direction or draft language. For the former  
17 group, the PIG integrated the language the resolved language into a draft it called Version 1.1.  
18 For the second group, the PIG developed language in consultation with the Rules Committee  
19 and the Office of Environmental Quality Control (OEQC). Further, the PIG developed language  
20 in response to requests from the Rules Committee and OEQC for issues that arose since 2012.  
21 At the July 11, 2017 meeting, the Council agreed that the PIG could present its report directly to  
22 the Council at its next meeting.

23 **Permitted Interaction Group Recommendations**

24 This report synthesizes Version 1.1 with additional revisions the PIG made to address  
25 unresolved comments from the 2012 Council, direction the Rules Committee gave on conflicting  
26 comments or recent issues, and current topics the OEQC raised.

27 The following revisions are the recommendations of the PIG to the Council as a baseline  
28 starting point for discussion going forward. Among the themes addressed are:

- 29 ● "Housekeeping" - revisions that modernize grammar and clarify language.
- 30 ● Clarifying roles and responsibilities at various stages of environmental review.
- 31 ● Modernizing submittals and deadlines to recognize electronic communication.
- 32 ● Setting clearer thresholds for exemptions and the role of exemption lists.
- 33 ● Clarifying when and how to proceed to directly preparing an EIS instead of an EA.
- 34 ● Clarifying when and how to do programmatic EISs and supplemental EISs.
- 35 ● Responding to comments in EAs and EISs.
- 36 ● Conducting joint federal-state environmental review.

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# HAR Chapter 11-200 Environmental Impact Statement Rules

1 Subchapter 1 Purpose

## §11-200-1 Purpose

2 Chapter 343, Hawaii Revised Statutes, (HRS)<sup>1</sup>, establishes a system of environmental review at  
3 the state and county levels ~~which~~ that<sup>2</sup> shall ensure that environmental concerns are given  
4 appropriate consideration in decision making along with economic and technical considerations.  
5 The purpose of this chapter is to provide agencies and persons with procedures, specifications  
6 of contents of environmental assessments and environmental impact statements, and criteria  
7 and definitions of statewide application.

8 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-1, 343-6)

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9 <sup>1</sup> Housekeeping.

10 <sup>2</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
11 housekeeping purposes, unless otherwise noted.

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1 Subchapter 2 Definitions and Terminology

## §11-200-2 Definitions and Terminology

2 As used in this chapter:

3 "Acceptance" means a formal determination of acceptability<sup>3</sup> that the document required to be  
4 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental  
5 impact statement (EIS),<sup>4</sup> ~~adequately describes identifiable environmental impacts, and~~  
6 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~  
7 ~~by section 11-200-23.~~<sup>5</sup> Acceptance does not mean that the action is environmentally sound or  
8 unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
9 determination of acceptance is required prior to implementing or approving the action.

10 "Accepting authority" means the final<sup>6</sup> official who<sup>7</sup> or agency that ~~determines the acceptability of~~  
11 ~~the EIS document~~ makes the determination that a final EIS required to be filed pursuant to  
12 chapter 343, HRS, fulfills the definitions and requirements of an EIS<sup>8</sup>.

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

14 "Addendum" means an attachment to a draft environmental assessment or draft ~~environmental~~  
15 ~~impact statement~~ EIS<sup>9</sup>, prepared at the discretion of the proposing agency or approving agency,  
16 and distinct from a supplemental statement, for the purpose of disclosing and addressing  
17 clerical errors such as inadvertent omissions, corrections, or clarifications to information already  
18 contained in the draft ~~environmental assessment~~ EA<sup>10</sup> or the draft ~~environmental impact~~  
19 ~~statement~~ EIS already filed with the office.

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

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22 <sup>3</sup> Housekeeping.

23 <sup>4</sup> Housekeeping.

24 <sup>5</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty  
25 that other EIS sections may not apply because they are omitted in the definition.

26 <sup>6</sup> Removes "final" because it does not contribute additional meaning to the definition.

27 <sup>7</sup> Housekeeping.

28 <sup>8</sup> Clarifies that the accepting authority role is about the acceptability about a final EIS.

29 <sup>9</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
30 housekeeping purposes, unless otherwise noted.

31 <sup>10</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
32 housekeeping purposes, unless otherwise noted.

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1 "Applicant" means any person who, pursuant to statute, ordinance, or rule, officially requests  
2 approval from an agency for a proposed action.

3 "Approval" means a discretionary consent required from an agency prior to actual<sup>11</sup>  
4 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~  
5 ~~recommendation from an agency for which judgment and free will may be exercised by the~~  
6 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~  
7 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~  
8 ~~by law or rule without the use of judgment or discretion.~~<sup>12</sup>

9 "Approving agency" means an agency that issues an approval prior to actual<sup>13</sup> implementation  
10 of an applicant<sup>14</sup> action, determines the need for an EA or EIS, and issues the exemption,  
11 FONSI, or acceptance determination.<sup>15</sup> The approving agency may be an accepting authority for  
12 an applicant final EIS.<sup>16</sup>

13 "Concurrence" means the discretionary consent of the council to an agency exemption list.<sup>17</sup>

14 "Council" or "EC" means the environmental council.

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

20 Discretionary consent means a consent, sanction, or recommendation from an agency for which  
21 judgment and free will may be exercised by the issuing agency, as distinguished from a  
22 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an

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23 <sup>11</sup> Does not add meaning to sentence so removing the word.

24 <sup>12</sup> Removed "discretionary consent" from the definition and made it a standalone definition that mirrors the  
25 statute.

26 <sup>13</sup> Does not add meaning to sentence so removing the word.

27 <sup>14</sup> Approving agencies are only in the case of applicants.

28 <sup>15</sup> The approving agency makes the decision about level of review and if the applicant has satisfied HRS  
29 Chapter 343.

30 <sup>16</sup> In the case of applicants, the approving agency is also the accepting authority. This adds clarification to  
31 the definition.

32 <sup>17</sup> Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary  
33 because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is  
34 not an approval because it does not apply to a specific project.

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1 agency upon a given set of facts, as prescribed by law or rule without the use of judgment or  
2 discretion.<sup>18</sup>

3 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a  
4 proposing agency or an approving agency for public review and comment when that agency  
5 anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)<sup>19</sup> determination.

6 "Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological  
7 effects (such as the effects on natural resources and on the components, structures, and  
8 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic  
9 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate or  
10 delayed<sup>20</sup>. Effects may also include those effects resulting from actions ~~which~~ that may have  
11 both beneficial and detrimental effects, even if on balance the agency believes that the effect  
12 will be beneficial.

13 "EIS public scoping meeting" means a meeting open to the public held by the proposing agency  
14 or applicant, or their representative, within the thirty-day public consultation period described in  
15 section 11-200-15, inviting the participation of those agencies, citizen groups, and individuals  
16 reasonably believed to be potentially affected by the proposed action (including those who might  
17 not be in accord with the proposed action), to assist the preparing party in determining the range  
18 of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft  
19 EIS and the significant issues to be analyzed in depth in the draft EIS. Suggestions made at the  
20 EIS public scoping meeting are considered to be advisory and not mandatory.

21 "Emergency action" means ~~an action to prevent or mitigate loss or damage to life, health,~~  
22 ~~property, or essential public services in response to a sudden unexpected occurrence~~  
23 ~~demanding such immediate action.~~ a project or program that normally would be subject to  
24 chapter 343, HRS, but is not because of a state of emergency declared by the governor.<sup>21</sup>

25 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,  
26 and social conditions that exist within the area affected by a proposed action, including land,  
27 human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of  
28 historic, cultural,<sup>22</sup> or aesthetic significance.

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29 <sup>18</sup> Definition removed from "approval" and made standalone. Mirrors HRS § 343-2 language and expands  
30 on ministerial definition (which is existing language in HAR § 11-200-2).

31 <sup>19</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
32 housekeeping purposes, unless otherwise noted.

33 <sup>20</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

34 <sup>21</sup> Redefines an emergency action to be an action undertaken during a particular emergency proclamation  
35 issued by the governor.

36 <sup>22</sup> Adds cultural to the definition of environment to make the definition in line with Act 50 (2000).

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1 "Environmental assessment" or "EA"<sup>23</sup> means a written evaluation ~~to determine whether an~~  
2 ~~action may have a significant environmental effect. that serves to provide sufficient evidence~~  
3 ~~and analysis to determine whether an action may have a significant environmental effect.~~<sup>24</sup> It,  
4 together with a FONSI, satisfies chapter 343, HRS, when no EIS is necessary, and facilitates  
5 preparation of an EIS when one is necessary and the proposing agency, based on its judgment  
6 and experience, has not previously determined that it would proceed directly with the  
7 preparation of an EISPN, or the agency, based on its judgment and experience, has not  
8 previously authorized the applicant to choose to proceed directly with the preparation of an  
9 EISPN.<sup>25</sup>

10 "~~Environmental impact~~" means an effect of any kind, ~~whether immediate or delayed, on any~~  
11 ~~component of the environment.~~<sup>26</sup>

12 "Environmental impact statement," "statement," or "EIS" means an informational document  
13 prepared in compliance with chapter 343, HRS, ~~and this chapter and which fully complies with~~  
14 ~~subchapter 7 of this chapter~~<sup>27</sup>. The initial statement EIS<sup>28</sup> filed for public review shall be referred  
15 to as the draft environmental impact statement EIS and shall be distinguished from the final  
16 environmental impact statement EIS, which is the document that has incorporated the public's  
17 comments and the responses to those comments. The final environmental impact statement  
18 EIS is the document that shall be evaluated for acceptability by the respective<sup>29</sup> accepting  
authority.

19 "~~Exempt classes of action~~" means ~~exceptions from the requirements of chapter 343, HRS, to~~  
20 ~~prepare environmental assessments, for a class of actions, based on a determination by the~~  
21 ~~proposing agency or approving agency that the class of actions will probably have a minimal or~~  
22 ~~no significant effect on the environment.~~<sup>30</sup>

23 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a  
24 public action, or the agency with the power of approval, in the case of a private action, when it  
25 has determined that the proposed project is an exempt or emergency project.

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26 <sup>23</sup> Adds common abbreviation for use throughout the rules.

27 <sup>24</sup> Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a  
28 significance determination rather than merely an assertion or lengthy analysis.

29 <sup>25</sup> Incorporates direct-to-EIS pathway into definition of an EA.

30 <sup>26</sup> Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment"  
31 provides more clarity than this definition.

32 <sup>27</sup> Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

33 <sup>28</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
34 housekeeping purposes, unless otherwise noted.

35 <sup>29</sup> Unnecessary language so recommend removing.

36 <sup>30</sup> Removes the definition because the concept of "classes of actions" is removed in section 8.

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1 "Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by  
2 a proposing agency or an approving agency following the public review and comment period for  
3 the draft ~~environmental assessment~~ EA and in support of either a FONSI or a ~~preparation notice~~  
4 an EISPN<sup>31</sup> ~~determination; or the environmental assessment submitted by a proposing agency~~  
5 ~~or an approving agency subject to a public consultation period when such an agency clearly~~  
6 ~~determines at the outset that the proposed action may have a significant effect and hence will~~  
7 ~~require the preparation of a statement.~~

8 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an  
9 EA that an action not otherwise exempt does not have the potential for a significant effect on the  
10 environment and therefore does not require the preparation of an EIS. A FONSI is required prior  
11 to implementing or approving the action.<sup>32</sup>

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

13 "National Environmental Policy Act" or "NEPA"<sup>33</sup> means the National Environmental Policy Act of  
14 1969, Public Law 91-190, 42 U.S.C. §4321-4347, as amended.

15 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
16 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
17 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
18 ~~A negative declaration is required prior to implementing or approving the action.~~<sup>34</sup>

19 "Office" means the office of environmental quality control.

20 "Periodic bulletin" means the document required by section 343-3, HRS, and published by the  
21 office.

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

24 "Power generating facility" means:

- 25 1. A new, fossil-fueled, electricity-generating facility, where the electrical output  
26 rating of the new equipment exceeds 5.0 megawatts; or

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27 <sup>31</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
28 housekeeping purposes, unless otherwise noted.

29 <sup>32</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

30 <sup>33</sup> Adds common abbreviation for use throughout the rules.

31 <sup>34</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

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1           2.     An expansion in generating capacity of an existing, fossil-fueled,  
2                    electricity-generating facility, where the incremental electrical output rating of the  
3                    new equipment exceeds 5.0 megawatts.<sup>35</sup>

4     "Preparation notice," or "EIS preparation notice,"<sup>36</sup> or "EISPN"<sup>37</sup> means a determination based  
5     ~~on an environmental assessment that the subject that an~~<sup>38</sup> action may have a significant effect  
6     on the environment and, therefore, will require the preparation of an ~~environmental impact~~  
7     ~~statement~~ EIS, based on either an EA or an agency's judgment and experience that the  
8     proposed action may have a significant effect on the environment and therefore authorizes the  
9     preparation of an EIS without first requiring an EA.<sup>39</sup>

10    "Primary impact," or "primary effect," or "direct impact,"<sup>40</sup> or "direct effect" means effects which  
11    that are caused by the action and occur at the same time and place.

12    A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a  
13    number of separate actions in a given geographic area which, if considered singly, may have  
14    minor impacts, but if considered together may have significant impacts; (2) a sequence of  
15    actions contemplated by a single agency or applicant; (3) separate actions having generic or  
16    common impacts; (4) an entire program or plan having wide application or restricting the range  
17    of future alternative policies or projects, including new or significant changes to existing land use  
18    plans, development plans, zoning regulations, or agency comprehensive resource management  
19    plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)  
20    implementation of a single project or program over a large geographic area.<sup>41</sup>

21    "Proposing agency" means any state or county agency that proposes an action under chapter  
22    343, HRS.<sup>42</sup>

23    "Secondary impact," or "secondary effect," or "indirect impact,"<sup>43</sup> or "indirect effect" means  
24    effects ~~which that~~ are caused by the action and are later in time or farther removed in distance,  
25    but are still reasonably foreseeable. Indirect effects may include growth inducing effects and

26    <sup>35</sup> Adds definition from HRS § 343-2.

27    <sup>36</sup> Housekeeping.

28    <sup>37</sup> Adds common abbreviation for use throughout the rules.

29    <sup>38</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS  
30    language.

31    <sup>39</sup> Adds the direct-to-EIS pathway to the definition of an EISPN.

32    <sup>40</sup> Housekeeping.

33    <sup>41</sup> Adds a definition to go along with new sections on how to do environmental review for an action this is  
34    a "program". Most environmental review focuses on projects. By providing language on a programmatic  
35    look, the rules give direction on how to address projects or programs at risk of being viewed as  
36    segmented and acknowledges the tension between earliest practicable time with project specificity.

37    <sup>42</sup> Added definition because the term is used frequently throughout the rules.

38    <sup>43</sup> Housekeeping.

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1 other effects related to induced changes in the pattern of land use, population density or growth  
2 rate, and related effects on air, ~~and~~ water,<sup>44</sup> and other natural systems, including ecosystems.

3 "Significant effect" or "significant impact" means the sum of effects on the quality of the  
4 environment, including actions that irrevocably commit a natural resource, curtail the range of  
5 beneficial uses of the environment, are contrary to the ~~state's~~ State's<sup>45</sup> environmental policies or  
6 long-term environmental goals and guidelines as established by law, ~~or~~<sup>46</sup> adversely affect the  
7 economic or social welfare, cultural practices of the community and State,<sup>47</sup> or are otherwise set  
8 forth in section 11-200-12 ~~of this chapter~~<sup>48</sup>.

9 "Substantial commencement" means that a project or program has reached the stage where its  
10 last approval has been granted, or, for government programs for which an approval is not  
11 required, the project or program has advanced to the point where financial commitments are in  
12 place and scheduled and design is essentially complete.<sup>49</sup>

13 "Supplemental statement EIS" means an ~~additional environmental impact statement updated~~  
14 EIS<sup>50</sup> prepared for an action for which ~~a statement an EIS~~ was previously accepted, but which  
15 has yet to progress to substantial commencement and since acceptance the action,  
16 circumstances, or anticipated impacts have<sup>51</sup> changed substantively in size, scope, intensity,  
17 use, location, or timing, among other things.

18 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.<sup>52</sup>

19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)

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20 <sup>44</sup> Housekeeping.

21 <sup>45</sup> Housekeeping.

22 <sup>46</sup> Housekeeping.

23 <sup>47</sup> Updates language to match Act 50 (2000) on cultural practices.

24 <sup>48</sup> Housekeeping.

25 <sup>49</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require  
26 examination for supplemental environmental review. This language draws on other statutes.

27 <sup>50</sup> Housekeeping.

28 <sup>51</sup> Incorporates substantial commencement into the definition and emphasizes that changes can apply to  
29 the proposed action, the environment, or knowledge (ties to supplemental sections).

30 <sup>52</sup> Adds definition from HRS § 343-2.

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1 Subchapter 3 Periodic Bulletin

**§11-200-3 Periodic Bulletin**

- 2 (a) The office shall inform the public through the publication of a periodic bulletin of the  
3 following:
- 4 (1) Notices filed by agencies of the availability of ~~environmental assessments~~ EAs  
5 and appropriate addendum documents for review and comments;
  - 6 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or  
7 not required;
  - 8 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and  
9 appropriate addendum documents for review and comments;
  - 10 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and
  - 11 (5) Other notices required by the rules of the council.
- 12 (b) ~~The bulletin shall be made available to any person upon request. Copies of the bulletin~~  
13 ~~shall also be sent to the state library system and other depositories or clearinghouses.~~<sup>53</sup>
- 14 (c)<sup>54</sup> The bulletin shall be issued on the eighth and twenty-third days of each month. All  
15 agencies and applicants submitting draft ~~environmental assessments~~ EAs, ~~negative~~  
16 ~~declarations~~ FONSIs, ~~preparation notices~~ EISPNS<sup>55</sup>, ~~environmental impact statements~~  
17 EISs, acceptance or nonacceptance determinations, addenda, supplemental ~~statements~~  
18 EISs, supplemental ~~preparation notices~~ EISPNS, revised documents, withdrawals, and  
19 other notices required to be published in the bulletin shall submit such documents or  
20 notices to the office before the close of business ~~eight~~ four<sup>56</sup> ~~working business~~<sup>57</sup> days  
21 prior to the issue date. In case the deadline falls on a state holiday or ~~nonworking~~  
22 non-business<sup>58</sup> day, the deadline shall be the next working business<sup>59</sup> day.
- 23 (d) All submittals to the office for publication in the bulletin shall be accompanied by a  
24 completed informational form ~~which~~ that provides whatever information the office needs  
25 to properly notify the public. The information requested may include the following: the  
26 title of the action; the islands affected by the proposed action; tax map key numbers;  
27 street addresses; nearest geographical landmarks; latitudinal and longitudinal

28 <sup>53</sup> This rule is no longer required as the periodic bulletin is available to everyone electronically and no  
29 paper copies are produced by the office.

30 <sup>54</sup> Housekeeping. Renumbers paragraphs.

31 <sup>55</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for  
32 housekeeping purposes, unless otherwise noted.

33 <sup>56</sup> OEQC does not need eight business days anymore to prepare the periodic bulletin.

34 <sup>57</sup> Housekeeping.

35 <sup>58</sup> Housekeeping.

36 <sup>59</sup> Housekeeping.

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1        coordinates or other geographic data<sup>60</sup>; applicable permits, including discretionary  
2        approvals requiring preparation of the document under chapter 343, HRS;<sup>61</sup> whether the  
3        proposed action is an agency or an applicant action; a citation of the applicable federal  
4        or state statutes requiring preparation of the document; the type of document prepared;  
5        the names, addresses and contact persons as applicable of the accepting authority, the  
6        proposing agency, the approving agency, the applicant, and the consultant; and a brief  
7        narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey  
8        the full impact of the proposed action to the public.

9        (ed)    The office may provide recommendations to the agency responsible for the  
10        ~~environmental assessment~~ EA or EIS regarding any applicable administrative content  
11        requirements set forth in this chapter.

12        (fe)    The office may, on a space available basis, publish other notices not specifically related  
13        to chapter 343, HRS.

14        [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,  
15        343-3, 343-6)

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16        <sup>60</sup> Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file.  
17        The existing rules already allows for this but this language is to make it clearer.

18        <sup>61</sup> Clarifies that the agency is required to identify the specific discretionary approval that requires an  
19        applicant to go through environmental review.

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1 Subchapter 4 Responsibilities

**§11-200-4 Identification of Approving Agency and<sup>62</sup>  
Accepting Authority**

- 2 (a) Whenever an agency proposes an action, the ~~final~~<sup>63</sup> authority to accept ~~a statement an~~  
3 EIS shall rest with:
- 4 (1) The governor, or ~~an~~ the governor's<sup>64</sup> authorized representative, whenever an  
5 action proposes the use of state lands or ~~the use of~~<sup>65</sup> state funds or,<sup>66</sup> whenever  
6 a state agency proposes an action ~~within~~ under<sup>67</sup> section 11-200-6(b); or  
7 (2) The mayor, or ~~an~~ the mayor's<sup>68</sup> authorized representative, of the respective  
8 county whenever an action proposes only the use of county lands or county  
9 funds.
- 10 In the event that an action involves state and county lands, funds, or both lands and  
11 funds, the governor or the governor's authorized representative shall have authority to  
12 accept the EIS.<sup>69</sup>
- 13 (b) Whenever an applicant proposes an action, the authority for requiring an EA or<sup>70</sup>  
14 statements EIS, and for making a determination regarding any required EA, and<sup>71</sup>  
15 accepting any required statements EIS that have been prepared shall rest with the  
16 approving<sup>72</sup> agency initially receiving and agreeing that initially received and agreed<sup>73</sup> to  
17 process the request for an approval. With respect to EISs, the approving agency is also  
18 called the accepting authority.<sup>74</sup>

19 <sup>62</sup> Expand the content of this section to also identify the agency with responsibility in cases of EAs.

20 <sup>63</sup> Removes the word final because it does not add to the meaning of the sentence.

21 <sup>64</sup> Housekeeping.

22 <sup>65</sup> Housekeeping.

23 <sup>66</sup> Housekeeping.

24 <sup>67</sup> Housekeeping.

25 <sup>68</sup> Housekeeping.

26 <sup>69</sup> Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and  
27 funds. This language is modified from the original language in section 11-200-23.

28 <sup>70</sup> Adds EAs to the identification of which agency has responsibility. Note that this change also means that  
29 the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing  
30 language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for  
31 situations involving EAs.

32 <sup>71</sup> Adds EAs to the identification of which agency has responsibility. Language is phrase so that the  
33 agency can make a FONSI or EISPN determination.

34 <sup>72</sup> Housekeeping. Clarifies the agency is called the approving agency.

35 <sup>73</sup> Housekeeping.

36 <sup>74</sup> Clarifies that approving agency is the accepting authority for applicants.

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- 1 (c)<sup>75</sup> In the event that there is more than one agency that is proposing the action or, in the  
2 case of applicants,<sup>76</sup> has jurisdiction over the action, and these agencies are unable to  
3 agree as to which agency has the responsibility for complying with ~~section 343-5(c)~~  
4 chapter 343<sup>77</sup>, HRS, the office, after consultation with the agencies involved, shall  
5 determine which agency is responsible. In making the determination, the office shall ~~take~~  
6 ~~into consideration, including, but not limited to, the following factors~~ consider<sup>78</sup>:  
7 (1) The agency with the greatest responsibility for supervising or approving the  
8 action as a whole;  
9 (2) The agency that can most adequately fulfill the requirements of chapter 343,  
10 HRS, and this chapter;  
11 (3) The agency that has special expertise or greatest<sup>79</sup> access to information; and  
12 (4) The extent of participation of each agency in the action.

13 [Eff 12/6/85; am and Comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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14 <sup>75</sup> Creates new paragraph to clarify that OEQC can make this determination for applicants and for  
15 agencies when they are unable to agree on who is the proposing agency or approving agency. The  
16 paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when  
17 multiple agencies want the responsibility.

18 <sup>76</sup> Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

19 <sup>77</sup> Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

20 <sup>78</sup> Housekeeping.

21 <sup>79</sup> Helps to distinguish among agencies - all agencies have access to information.

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1 Subchapter 5 Applicability

**§11-200-5 Agency Actions**

- 2 (a) For all proposed agency<sup>80</sup> actions ~~which that~~ are not exempt,<sup>81</sup> as defined in section  
3 11-200-8, the proposing<sup>82</sup> agency shall assess at the earliest practicable time the  
4 significance of potential impacts of ~~its actions~~ the proposed agency's action<sup>83</sup>, including  
5 the overall, cumulative impact in light of related past, present, and reasonably  
6 foreseeable<sup>84</sup> actions in the region area affected<sup>85</sup> ~~and further actions contemplated.~~<sup>86</sup>
- 7 (b) The applicability of chapter 343, HRS, to specific agency proposed actions is  
8 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~  
9 ~~when an agency proposes to implement an action to use state or county lands or funds,~~  
10 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~<sup>87</sup>
- 11 (c) Use of state or county funds shall include any form of funding assistance flowing from  
12 the State or county, and use of state or county lands includes any use (title, lease,  
13 permit, easement, licenses, etc.) or entitlement to those lands.
- 14 (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or  
15 planning study for possible future programs or projects ~~which that~~ the agency has not  
16 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a  
17 proposal, it shall consider environmental factors and available alternatives and disclose  
18 these in any future assessment EA or subsequent statement EIS. ~~If, however,~~<sup>88</sup> the  
19 planning and feasibility studies involve testing or other actions ~~which that~~ may have a  
20 significant impact on the environment, ~~then~~<sup>89</sup> an environmental assessment EA or EIS<sup>90</sup>  
21 shall be prepared.

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22 <sup>80</sup> Housekeeping.

23 <sup>81</sup> Housekeeping.

24 <sup>82</sup> Housekeeping.

25 <sup>83</sup> Housekeeping.

26 <sup>84</sup> Clarifies what is considered as part of a cumulative look. Language is drawn from NEPA, 40 CFR  
27 1508.7.

28 <sup>85</sup> Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

29 <sup>86</sup> Removes "further actions contemplated" because it is captured in the language of "reasonably  
30 foreseeable."

31 <sup>87</sup> Housekeeping. Redundant language.

32 <sup>88</sup> Housekeeping.

33 <sup>89</sup> Housekeeping.

34 <sup>90</sup> Acknowledges direct-to-EIS pathway.

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1 (e) Any amendment to existing county general plans, however denominated, which may  
2 include ~~but not be limited to~~ development plans,<sup>91</sup> or community plans, where the  
3 amendment would result in designations other than agriculture, conservation, or  
4 preservation,<sup>92</sup> requires an ~~environmental assessment~~ EA or EIS<sup>93</sup>. (Actions by a county  
5 initiating a comprehensive review toward effectuating either a general plan or  
6 amendment thereof may be excepted. General plan amendments requested by a private  
7 owner or developer outside of the comprehensive review process are not excepted.)

8 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(b),  
9 343-6)

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10 <sup>91</sup> Housekeeping.

11 <sup>92</sup> Housekeeping.

12 <sup>93</sup> Direct-to-EIS is also an option.

## §11-200-6 Applicant Actions

- 1 (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency  
2 approval prior to proceeding with:
- 3 (1) Implementing actions ~~which that~~ are either located in certain specified areas or  
4 contain certain specified elements<sup>94</sup>; or
- 5 (2) Actions that require certain types of amendments to existing county general  
6 plans.

7 The approving agency that initially received and agreed to process the request for  
8 approval shall require the applicant to prepare an EA of the proposed action at the  
9 earliest practicable time to determine whether an EIS is likely to be required; provided  
10 that if the approving agency determines, through its judgment and experience, that an  
11 EIS is likely to be required, the approving agency may authorize the applicant to choose  
12 not to prepare an EA and instead prepare an EIS that begins with the preparation of an  
13 EISPN.<sup>95</sup>

- 14 (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the  
15 ~~agency-processing an applicant's request for approval to prepare an environmental~~  
16 ~~assessment the applicant to prepare an EA~~<sup>96</sup>. There are seven geographical categories,  
17 five proposal elements<sup>97</sup>, and two administrative categories.

- 18 (1) The seven geographical categories are:
- 19 (A) The use of state or county lands;
- 20 (B) Any use within any land classified as conservation district by the state  
21 land use commission under chapter 205, HRS;
- 22 (C) Any use within the shoreline area as defined in section 205A-41, HRS;
- 23 (D) Any use within any historic site as designated in the national register or  
24 Hawaii register;
- 25 (E) Any use within the Waikiki area of Oahu, the boundaries of which are  
26 delineated in the land use ordinance as amended, establishing the  
27 "Waikiki Special District";
- 28 (F) Any reclassification of any land classified as conservation district by the  
29 state land use commission under chapter 205, HRS; and
- 30 (G) The construction of a new, or the expansion or modification of an existing  
31 helicopter facilities facility<sup>98</sup> within the State ~~which that~~ by way of ~~their-its~~<sup>99</sup>

32 <sup>94</sup> Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

33 <sup>95</sup> Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to  
34 prepare the document.

35 <sup>96</sup> Housekeeping.

36 <sup>97</sup> Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

37 <sup>98</sup> Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

38 <sup>99</sup> Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

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1 activities may affect;<sup>100</sup> any land classified as conservation district by the  
2 state land use commission under chapter 205, HRS; the shoreline area  
3 as defined in section 205A-41, HRS; or,<sup>101</sup> any historic site as designated  
4 in the National Register or Hawaii Register as ~~provided for in the Historic~~  
5 ~~Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of~~  
6 Historic Places<sup>102</sup>; or, until the statewide historic places inventory is  
7 completed, any historic site found by a field reconnaissance of the area  
8 affected by the helicopter facility and ~~which~~ that is under consideration for  
9 placement on the National Register or the Hawaii Register of Historic  
10 Places.

11 (2) The five proposal elements are:

12 (A) Wastewater treatment unit, except an individual wastewater system or  
13 wastewater treatment unit serving fewer than fifty single-family dwellings  
14 or the equivalent;

15 (B) Waste-to-energy facility;

16 (C) Landfill;

17 (D) Oil refinery; or

18 (E) Power-generating facility.<sup>103</sup>

19 (23) The two administrative categories are:

20 (A) Any amendment to existing county general plans, however denominated,  
21 which may include, but are not ~~be~~ limited to, development plans,<sup>104</sup> or  
22 community plans, where the amendment would result in designations  
23 other than agriculture, conservation, or preservation. (Actions by a county  
24 initiating a comprehensive review toward effectuating either a general  
25 plan or amendment thereof may be excepted. General plan amendments  
26 requested by a private owner or developer outside of the comprehensive  
27 review process are not excepted.); and

28 (B) The use of state or county funds, other than funds to be used for  
29 feasibility or planning studies for possible future programs or projects  
30 ~~which~~ that the agency has not approved, adopted, or funded, or funds to  
31 be used for the acquisition of unimproved real property; provided that the  
32 agency shall consider environmental factors and available alternatives in  
33 its feasibility or planning studies.

34 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

35 <sup>100</sup> Housekeeping.

36 <sup>101</sup> Housekeeping.

37 <sup>102</sup> Housekeeping. Unnecessary specificity.

38 <sup>103</sup> Acknowledges the "project" type triggers (e.g., waste-to-energy facility).

39 <sup>104</sup> Housekeeping.

## **§11-200-7 Multiple or Phased Applicant or Agency Actions**

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

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

9 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

## §11-200-8 ~~Exempt Classes of Action~~ Exemption Notices<sup>105</sup>

- 1 (a) Chapter 343, HRS, states that procedures whereby specific types of actions, because  
2 they will probably have minimal or no significant effects, individually and cumulatively, on  
3 the environment, can be declared exempt from the preparation of an EA.<sup>106</sup> ~~a list of~~  
4 ~~classes of actions shall be drawn up which, because they will probably have minimal or~~  
5 ~~no significant effect on the environment, may be declared exempt by the proposing~~  
6 ~~agency or approving agency from the preparation of an environmental assessment~~  
7 ~~provided that agencies declaring an action exempt under this section shall obtain the~~  
8 ~~advice of other outside agencies or individuals having jurisdiction or expertise as to the~~  
9 ~~propriety of the exemption. Government activities that do not rise to the level of being a~~  
10 ~~project or program, or are ordinary functions that by their nature do not have the~~  
11 ~~potential to adversely affect the environment more than negligibly, which may include,~~  
12 ~~among other activities, routine repair, maintenance, purchase of supplies, and~~  
13 ~~administrative actions involving personnel only, shall not be considered projects or~~  
14 ~~programs for the purposes of Chapter 343, HRS.~~<sup>107</sup> Actions declared exempt from the  
15 preparation of an environmental assessment under this section are not exempt from  
16 complying with any other applicable statute or rule. The following types of projects or  
17 programs are eligible for exemption<sup>108</sup> ~~list represents exempt classes of action:~~
- 18 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment,  
19 or topographical features, involving ~~negligible~~ minor<sup>109</sup> or no expansion or change  
20 of use beyond that previously existing;
  - 21 (2) Replacement or reconstruction of existing structures and facilities where the new  
22 structure will be located generally on the same site and will have substantially the  
23 same purpose, capacity, density, height, and dimensions as the structure  
24 replaced;
  - 25 (3) Construction and location of single, new, small facilities or structures and the  
26 alteration and modification of the same and installation of new, small, equipment  
27 and facilities and the alteration and modification of same, including, but not  
28 limited to:

29 <sup>105</sup> Renames to shift focus from the “classes” (a term no longer used) to the notice.

30 <sup>106</sup> Incorporates language direction from chapter 343, HRS.

31 <sup>107</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental  
32 review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts  
33 to decide whether a particular activity constitutes such.

34 <sup>108</sup> Replaces “classes” language with “types”.

35 <sup>109</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance  
36 can have little or no significant impact.

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- 1 (A) Single-family residences less than 3,500 square feet, as measured by the  
2 controlling law under which the proposed action is being considered.<sup>110</sup>  
3 not in conjunction with the building of two or more such units;  
4 (B) Multi-unit structures designed for not more than four dwelling units if not  
5 in conjunction with the building of two or more such structures;  
6 (C) Stores, offices, and restaurants designed for total occupant load of twenty  
7 persons or less per structure, if not in conjunction with the building of two  
8 or more such structures; and  
9 (D) Water, sewage, electrical, gas, telephone, and other essential public utility  
10 services extensions to serve such structures or facilities; accessory or  
11 appurtenant structures including garages, carports, patios, swimming  
12 pools, and fences; and, acquisition of utility easements;  
13 (4) Minor alterations in the conditions of land, water, or vegetation;  
14 (5) Basic data collection, research, experimental management, and resource and  
15 infrastructure testing and<sup>111</sup> evaluation activities ~~which that~~ do not result in a  
16 serious or major disturbance to an environmental resource;  
17 (6) Construction or placement of minor structures accessory to existing facilities;  
18 (7) Interior alterations involving things such as partitions, plumbing, and electrical  
19 conveyances;  
20 (8) Demolition of structures, except those structures located on any historic site as  
21 designated in the national register or Hawaii register ~~as provided for in the~~  
22 ~~National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470,~~  
23 ~~as amended, or chapter 6E, HRS~~<sup>112</sup>;  
24 (9) Zoning variances except shoreline set-back variances; ~~and~~<sup>113</sup>  
25 ~~(10) Continuing administrative activities including, but not limited to purchase of~~  
26 ~~supplies and personnel related actions.~~<sup>114</sup>  
27 (14)<sup>115</sup> Acquisition of land and existing structures, including single or multi-unit dwelling  
28 units, for the provision of affordable housing, involving no material change of use  
29 beyond that previously existing, and for which the legislature has appropriated or  
30 otherwise authorized funding<sup>116</sup>; and<sup>117</sup>

31 <sup>110</sup> Counties and even different agencies within counties, measure residence area differently. This  
32 language acknowledges the difference.

33 <sup>111</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or  
34 effects on traffic patterns.

35 <sup>112</sup> Unnecessary language.

36 <sup>113</sup> Housekeeping.

37 <sup>114</sup> Deletes language because it is addressed at the beginning of paragraph (a).

38 <sup>115</sup> Housekeeping. Renumbering this and subsequent paragraphs.

39 <sup>116</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for  
40 acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section  
41 11-200-8 with HAR Chapter 11-200. This language incorporates and compiles the 2007 change.

42 <sup>117</sup> Housekeeping.

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- 1           (11) New construction of affordable housing that only has use of state or county lands  
2           or funds as the requirement for undergoing chapter 343, HRS, and as proposed  
3           is consistent with existing state urban land classification, existing county  
4           residential or mixed use zoning classification, and applicable federal, state, and  
5           county development standards.<sup>118</sup>
- 6           (b) All exemptions under the ~~classes~~ types<sup>119</sup> in this section are inapplicable when the  
7           cumulative impact of planned successive actions in the same place, over time, is  
8           significant, or when an action that is normally insignificant in its impact on the  
9           environment may be significant in a particularly sensitive environment.
- 10          (c) Any agency, at any time, may request that a new exemption class type<sup>120</sup> be added, or  
11          that an existing one be amended or deleted. The request shall be submitted to the  
12          council, in writing, and contain detailed information to support the request as set forth in  
13          section 11-201-16, environmental council rules.
- 14          (d) Each agency, through time and experience, shall develop its own list of specific types of  
15          actions which fall within the exempt classes types above<sup>121</sup>, as long as these lists are  
16          consistent with both the letter and intent expressed in ~~these exempt classes here~~<sup>122</sup> and  
17          chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the  
18          council for review and concurrence. The lists shall be reviewed periodically by the  
19          council.
- 20          (e)<sup>123</sup> Actions that are clearly covered by an agency exemption list that has received council  
21          concurrence and do not have any potential to produce significant impacts do not require  
22          documentation.<sup>124</sup> Actions with no documentation may still be subject to the public's right  
23          to a judicial proceeding on the lack of an assessment, pursuant to chapter 343, HRS.<sup>125</sup>

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24          <sup>118</sup> Adds affordable housing as an exemption type, with caveats the following caveats: 1) that the only  
25          trigger is use state or county lands or funds (other triggers would mean the exemption is not applicable)  
26          and that 2) the proposed action is consistent with existing land use controls so that it does not require  
27          going before the LUC or Planning Commissions to get a change in SLUD or zoning.

28          <sup>119</sup> Housekeeping.

29          <sup>120</sup> Housekeeping.

30          <sup>121</sup> Housekeeping.

31          <sup>122</sup> Housekeeping.

32          <sup>123</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.

33          <sup>124</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de*  
34          *minimis* but may not require the level of consultation and documentation associated with typical projects  
35          or programs.

36          <sup>125</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers  
37          are out" and the agency may have erred in its decision to not prepare an EA.

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

- 1 (f) For an action that an agency considered exempt according to the criteria in paragraph  
2 (a) but is not clearly covered by the agency's exemption list, or is on the agency's  
3 exemption list but that list has not received council concurrence within the past five  
4 years, the agency shall undertake a systematic analysis to determine whether the action  
5 merits exemption consistent with one or several of the types listed in paragraph (a).<sup>126</sup>  
6 For such actions, the agency shall obtain the advice of outside agencies or individuals  
7 having jurisdiction or expertise as to the propriety of the exemption. An action may not  
8 be segmented per section 11-200-7 so as to appear to be consistent with several types  
9 listed in paragraph (a).<sup>127</sup>
- 10 (eg) Each agency shall maintain records of such<sup>128</sup> actions, called exemption notices.<sup>129</sup>  
11 which it has found to be exempt from the requirements for preparation of an  
12 environmental assessment EA in chapter 343, HRS, and each agency shall produce the  
13 records for review upon request. The agency shall provide a means to notify and accept  
14 input from the public in a timely manner after the exemption declaration is made. An  
15 agency may request the office to publish the exemption notice in the periodic bulletin.  
16 The public's right to judicial proceeding on the lack of an assessment under chapter 343,  
17 HRS shall commence from the date the public is notified of the exemption through the  
18 agency's means or publication in the bulletin, whichever of the two is earliest.<sup>130</sup>
- 19 (fh) In the event the governor declares a state of emergency pursuant to chapter 127A, HRS,  
20 <sup>131</sup> the governor may exempt any affected program or action from complying with this  
21 chapter. has authority to suspend laws, including chapter 343, HRS. In such an event,  
22 no exemption declaration is required and the proposing agency or approving agency

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23 <sup>126</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not  
24 received council concurrence within the past five years. The five years concurrence threshold is an  
25 incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation  
26 so that agencies can continue to use the list but with a higher burden of due diligence.

27 <sup>127</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several  
28 exemption types.

29 <sup>128</sup> Housekeeping.

30 <sup>129</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these  
31 as a record.

32 <sup>130</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or  
33 through their own means. Some agencies already do this by posting them to their website in a  
34 spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a  
35 determination and how the public is supposed to know, so that everyone has a clear date for when legal  
36 challenge begins and ends, without making the disclosure process overly burdensome to agencies or  
37 OEQC.

38 <sup>131</sup> States the name of the statute for emergency proclamations.

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1           shall file an exemption notice in its records that the emergency action was undertaken  
2           pursuant to a specific emergency proclamation.<sup>132</sup>

3 (i)       An emergency action that is not initiated within the period of the governor’s emergency  
4       proclamation shall no longer be considered an emergency action and therefore shall be  
5       subject to chapter 343, HRS.<sup>133</sup>

6 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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7 <sup>132</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that  
8 the agency has a responsibility to record that the action occurred during a specific emergency  
9 proclamation in case a question arises about the lack of an assessment.

10 <sup>133</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not  
11 start during the emergency proclamation from being covered by the emergency proclamation.

1 Subchapter 6 Determination of Significance

## §11-200-9 Assessment of Agency Actions and Applicant Actions

- 2 (a) For agency actions, except those actions exempt from the preparation of an  
3 ~~environmental assessment~~ EA pursuant to section 343-5, HRS, or section 11-200-8, the  
4 proposing agency shall:
- 5 (1) Seek, at the earliest practicable time, the advice and input of the county agency  
6 responsible for implementing the county's general plan for each county in which  
7 the proposed action is to occur, and consult with other agencies having  
8 jurisdiction or expertise as well as those citizen groups and individuals ~~which~~ that  
9 the proposing agency reasonably believes ~~to~~ may<sup>134</sup> be affected;
- 10 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~ the  
11 <sup>135</sup> statutory conditions under section 343-5(a), HRS, that<sup>136</sup> require the  
12 preparation of an ~~environmental assessment~~ EA;
- 13 (3) Prepare an ~~environmental assessment~~ EA pursuant to section 11-200-10 ~~of this~~  
14 ~~chapter which shall also identify~~ that identifies<sup>137</sup> potential impacts, ~~evaluate~~  
15 evaluates<sup>138</sup> the potential significance of each impact, and ~~provide~~ provides<sup>139</sup> for  
16 detailed study of significant impacts;
- 17 (4) Determine, after reviewing the ~~environmental assessment~~ EA described in  
18 paragraph (3), and considering the significance criteria in section 11-200-12,  
19 whether the proposed action warrants an anticipated ~~negative declaration~~ FONSI  
20 or an ~~environmental impact statement preparation notice~~ EISPN, provided that  
21 for an ~~environmental impact statement preparation notice~~ EISPN, the proposing  
22 agency shall inform the accepting authority of the proposed action;
- 23 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~  
24 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
25 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the  
26 completed informational form referenced<sup>140</sup> in section 11-200-3(d)<sup>141</sup>, and ~~four~~  
27 ~~copies of~~<sup>142</sup> the supporting ~~environmental assessment~~ EA (a draft ~~environmental~~  
28 ~~assessment~~ EA for the anticipated ~~negative declaration~~ FONSI or a final

29 <sup>134</sup> Housekeeping.

30 <sup>135</sup> Housekeeping.

31 <sup>136</sup> Housekeeping.

32 <sup>137</sup> Housekeeping.

33 <sup>138</sup> Housekeeping.

34 <sup>139</sup> Housekeeping.

35 <sup>140</sup> Housekeeping.

36 <sup>141</sup> Housekeeping.

37 <sup>142</sup> OEQC only needs one copy, not four.

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

- 1 environmental assessment EA for the environmental impact statement  
2 preparation notice EISPN) with the office in accordance with sections 11-200-3,  
3 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;
- 4 (6) ~~Distribute~~ Circulate<sup>143</sup>, concurrently with the filing in paragraph (5), the draft  
5 environmental assessment EA to other agencies having jurisdiction or expertise  
6 as well as citizen groups and individuals ~~which~~ that the proposing agency  
7 reasonably believes to may<sup>144</sup> be affected;
- 8 (7) Deposit, concurrently with the filing in paragraph (5), one paper<sup>145</sup> copy of the  
9 draft environmental assessment EA at the nearest state library in each county in  
10 which the proposed action is to occur and one paper copy at the Hawaii  
11 Documents Center<sup>146</sup>;
- 12 (8) Receive and respond to public comments in accordance with:  
13 (A) section 11-200-9.1 for draft environmental assessments EAs for  
14 anticipated ~~negative declaration~~ FONSI determinations; or  
15 (B) section 11-200-15 for environmental assessments EAs for preparation  
16 notices EISPNs.
- 17 For draft environmental assessments EAs, the proposing agency shall revise the  
18 environmental assessment EA to incorporate public comments as appropriate,  
19 and append copies of comment letters and responses in the ~~environmental~~  
20 assessment EA (the draft ~~environmental assessment EA~~ as revised, shall be filed  
21 as a final ~~environmental assessment EA~~ as described in section 11-200-11.2);  
22 and
- 23 (9) As appropriate, issue either a ~~negative declaration~~ FONSI determination or an  
24 ~~environmental impact statement preparation notice~~ EISPN pursuant to the  
25 requirements of section 11-200-11.2, ~~provided that for~~ For<sup>147</sup> preparation notice  
26 EISPN determinations, the proposing agency shall proceed to section 11-200-15  
27 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13,  
28 and 11-200-14, as appropriate.
- 29 (b) For applicant actions, except those actions exempt from the preparation of an  
30 ~~environmental assessment EA~~ pursuant to section 343-5, HRS, or those actions ~~which~~

31 <sup>143</sup> The term “distribute” is the section heading of §11-200-21, thus giving the term a particular role in HAR  
32 chapter 11-200, so the verb “circulate” is proposed instead.

33 <sup>144</sup> Housekeeping.

34 <sup>145</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the  
35 people nearest the proposed action without electronic access are able to review the document.

36 <sup>146</sup> Adds a request from the State Library that only two hard copies be submitted to the state library  
37 system, one for the local library near the proposed action as an environmental/social justice concern and  
38 one at the document center for archival records. Ideally, these are the only two hard copies produced of a  
39 draft EA.

40 <sup>147</sup> Housekeeping.

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

1 that the approving agency declares exempt pursuant to section 11-200-8, the approving  
2 agency shall:

- 3 (1) Require the applicant, at the earliest practicable time, to seek the advice and  
4 input of the lead county agency responsible for implementing the county's  
5 general plan for each county in which the proposed action is to occur, and  
6 consult with other agencies having jurisdiction or expertise as well as those  
7 citizen groups and individuals which that the approving agency reasonably  
8 believes to be affected;
- 9 (2) Require the applicant to ~~provide whatever information the approving agency~~  
10 ~~deems necessary to~~<sup>148</sup> complete the preparation of an ~~environmental assessment~~  
11 EA in accordance with section 11-200-10;
- 12 (3) Within thirty days from the date of receipt of the applicant's complete request for  
13 approval to the approving agency:  
14 (A) ~~prepare an environmental assessment pursuant to section 11-200-10; and~~  
15 (B) ~~determine, after reviewing the environmental assessment and considering~~  
16 ~~the significance criteria in section 11-200-12 whether the proposed action~~  
17 ~~warrants an anticipated negative declaration or an environmental impact~~  
18 ~~statement preparation notice;~~  
19 require the applicant<sup>149</sup> to prepare a draft EA pursuant to section 11-200-10;<sup>150</sup>
- 20 (4)<sup>151</sup> Determine, after reviewing the draft EA and considering the significance criteria  
21 in section 11-200-12, whether the proposed action warrants an anticipated  
22 FONSI or an EISPN;<sup>152</sup>
- 23 (45) File the appropriate notice of determination (~~anticipated negative declaration~~  
24 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
25 accordance with section 11-200-11.1 or 11-200-11.2), the completed  
26 informational form referenced<sup>153</sup> in section 11-200-3(d)<sup>154</sup> and ~~four copies of the~~  
27 supporting ~~environmental assessment~~ EA (a ~~draft environmental assessment~~ EA  
28 for the ~~anticipated negative declaration~~ FONSI or a final ~~environmental~~  
29 ~~assessment~~ EA for the ~~environmental impact statement preparation notice~~

30 <sup>148</sup> Narrows the language to focus on the EA on the content requirements.

31 <sup>149</sup> Shifts the focus of preparation to the applicant per Act 172 (2012).

32 <sup>150</sup> Removes the thirty-day requirement for an approving agency to prepare, review, and issue an  
33 anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within 30 days of receipt of a  
34 request for approval which course of environmental review the applicant is to take.

35 <sup>151</sup> Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is  
36 appropriate. Subsequent paragraphs are renumbered.

37 <sup>152</sup> Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage  
38 and filing an anticipated FONSI.

39 <sup>153</sup> Housekeeping.

40 <sup>154</sup> Housekeeping.

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- 1            EISPN) with the office in accordance with sections 11-200-3, and 11-200-11.1, or  
2            11-200-11.2, and other applicable sections of this chapter<sup>155</sup>;
- 3            (56) ~~Distribute~~ Circulate<sup>156</sup>, or require the applicant to ~~distribute~~ circulate<sup>157</sup>,  
4            concurrently with the filing in paragraph (4), the draft ~~environmental assessment~~  
5            EA to other agencies having jurisdiction or expertise as well as citizen groups  
6            and individuals ~~which~~ that the approving agency reasonably believes to be  
7            affected;
- 8            (67) Deposit or require the applicant to deposit, concurrently with the filing in  
9            paragraph (4), one paper<sup>158</sup> copy of the draft ~~environmental assessment~~ EA at  
10            the nearest state library in each county in which the proposed action is to occur  
11            and one paper copy at the Hawaii Documents Center<sup>159</sup>;
- 12            (78) Receive public comments, transmit copies of public comments to the applicant  
13            and require the applicant to respond to public comments, all in accordance with  
14            section 11-200-9.1 for draft ~~environmental assessment~~ EA, or 11-200-15 for  
15            ~~preparation notices~~ EISPNs and their associated final ~~environmental assessment~~  
16            EA. For draft ~~environmental assessment~~ EA, the approving agency shall require  
17            the applicant:
- 18            (A)<sup>160</sup> ~~to provide~~ revise the draft EA with<sup>161</sup> ~~whatever~~ information the approving  
19            agency deems necessary in accordance with section 11-200-10<sup>162</sup> ~~to~~  
20            ~~revise the draft environmental assessment to inform its determination for~~  
21            a FONSI or EISPN, taking into account comments on the draft EA<sup>163</sup>;
- 22            (B) ~~to incorporate comments as appropriate; and,~~
- 23            (C) ~~to include copies of comment letters and the applicant responses.~~
- 24            ~~(the~~ The<sup>164</sup> ~~draft environmental assessment EA as revised shall be filed as a~~  
25            ~~final environmental assessment EA as described in section 11-200-11.2)~~<sup>165</sup>; and

26            <sup>155</sup> Adds language to ensure that other sections are fulfilled as well.

27            <sup>156</sup> Replaces the term “distribute” because that term is the section heading of §11-200-21, thus giving the  
28            term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

29            <sup>157</sup> Replaces the term “distribute” because that term is the section heading of §11-200-21, thus giving the  
30            term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

31            <sup>158</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the  
32            people nearest the proposed action without electronic access are able to review the document.

33            <sup>159</sup> Adds a request from the State Library that only two hard copies be submitted to the state library  
34            system, one for the local library near the proposed action as an environmental/social justice concern and  
35            one at the document center for archival records. Ideally, these are the only two hard copies produced of a  
36            draft EA.

37            <sup>160</sup> Breaks up the paragraph so that the three requirements for the applicant are easier to read.

38            <sup>161</sup> Housekeeping.

39            <sup>162</sup> Emphasizes that the final EA content should still meet the EA content requirements as set for in  
40            section 10.

41            <sup>163</sup> Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or  
42            EISPN based on the content and draft EA comments.

43            <sup>164</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

44            <sup>165</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

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

1 (89) As appropriate, issue a ~~negative declaration~~ FONSI determination or an  
2 ~~environmental impact statement preparation notice~~ EISPN with appropriate  
3 notice of determination thereof pursuant to section 11-200-11.2 ~~within thirty days~~  
4 ~~from the end of the thirty-day public comment period~~ of receiving information  
5 required for delivery to the approving agency pursuant to paragraph 8<sup>166</sup>. For  
6 ~~preparation notice~~ EISPN determinations, the approving agency shall proceed to  
7 section 11-200-15 after fulfilling the requirements of sections 11-200-10,  
8 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

9 (c) For agency or applicant actions, the proposing agency or the approving agency, as  
10 appropriate, shall analyze or cause to be analyzed in the EA a reasonable range of<sup>167</sup>  
11 alternatives, in addition to the proposed action in the ~~environmental assessment~~ EA.

12 (d) For agency or applicant actions, if the agency determines, through its judgment and  
13 experience, that an EIS is likely to be required, the agency may choose not to prepare  
14 an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and  
15 instead shall prepare an EIS that begins with an EISPN.<sup>168</sup>

16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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17 <sup>166</sup> Changes the deadline from 30 days after the close of the public comment period to 30 days after  
18 receipt of the final EA.

19 <sup>167</sup> Clarifies that the alternatives to be examined are done so in the environmental assessment, not  
20 independent of it, and that the agency directs the applicant to analyze alternatives in an  
21 applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that  
22 not all possible alternatives are required to be analyzed.

23 <sup>168</sup> Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental  
24 assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize  
25 applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an  
26 EIS beginning with the EISPN.

## **§11-200-9.1 Public Review & Response Requirements for Draft Environmental Assessments for Anticipated Negative Declaration Finding of No Significant Impact<sup>169</sup> Determinations & Addenda to Draft Environmental Assessments**

- 1 (a) This section shall apply only if a proposing agency or an approving agency anticipates a  
2 negative declaration FONSI determination for a proposed action and that agency has  
3 completed the draft EA requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4),  
4 (5), (6) and (7) for agencies<sup>170</sup>; or section 11-200-9(b), paragraphs (1), (2), (3), (4), (5)  
5 and (6) for applicants<sup>171</sup>, as appropriate.
- 6 (b) ~~The period for public review and for submitting written comments for both agency actions~~  
7 ~~and applicant actions shall begin as of the initial issue date that notice of availability of~~  
8 ~~the draft environmental assessment EA was published in the periodic bulletin and shall~~  
9 ~~continue for a period of thirty days. For agency actions and applicant actions, the period~~  
10 ~~for public review and for submitting written comments shall commence from the date of~~  
11 ~~notice of availability of the draft EA is initially issued in the periodic bulletin and shall~~  
12 ~~continue for a period of thirty calendar days.~~<sup>172</sup> Written comments to the proposing  
13 agency or approving agency, whichever is applicable, with a copy of the comments to  
14 the applicant, if applicable,<sup>173</sup> ~~or proposing agency,~~<sup>174</sup> shall be received or postmarked to  
15 the proposing agency or approving agency, within the thirty-day period. Any comments  
16 outside of the thirty-day period need not be considered or responded to. However, for a  
17 proposed site for a new correctional facility or for the expansion of an existing  
18 correctional facility, pursuant to section 353-16.35, HRS, the thirty-day period shall be a  
19 sixty-day period.<sup>175</sup>

20 <sup>169</sup> Housekeeping.

21 <sup>170</sup> These paragraphs refer to requirements for agencies preparing an EA through distributing and filing  
22 the Draft EA.

23 <sup>171</sup> These paragraphs refer to requirements for applicants preparing an EA through distributing and filing  
24 the Draft EA.

25 <sup>172</sup> Measures time consistently in the process. Adds clarity to how to count days (distinguishes from  
26 working days) and that the publication date is counted as day zero.

27 <sup>173</sup> Clarifies that applicants are not always involved and when not involved, not copy of the comments  
28 need to be sent to the applicant.

29 <sup>174</sup> Redundant; the proposing agency is already as identified as receiving comments.

30 <sup>175</sup> Incorporates the public comment period and time limit from HRS § 353-16.35.

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- 1 (c) For agency actions, the proposing agency shall respond in writing to all comments  
2 received or postmarked during the thirty-day review period, incorporate comments into  
3 the final EA<sup>176</sup> as appropriate,<sup>177</sup> and append the comments and responses ~~in to~~<sup>178</sup> the  
4 final environmental assessment EA. ~~Each response shall be sent directly to the person~~  
5 ~~commenting, with copies of the response also sent to the office. If a number of~~  
6 comments are identical or very similar, the proposing agency may group the comments  
7 and prepare a single standard response for each group. The comments must be  
8 attached to the final EA regardless of whether the agency believes the comments merit  
9 individual discussion in the body of the final EA.<sup>179</sup>
- 10 (d) For applicant actions, the applicant shall respond in writing to all comments received or  
11 postmarked during the thirty-day review period and ~~the approving agency shall~~<sup>180</sup>  
12 incorporate ~~or~~ comments into the final EA as appropriate, and<sup>181</sup> append the comments  
13 and responses ~~in to~~<sup>182</sup> the final environmental assessment EA. If a number of comments  
14 are identical or very similar, the applicant may group the comments a prepare a single  
15 standard response for each group. The comments must be attached to the final EA  
16 regardless of whether the approving agency believes the comments merit individual  
17 discussion in the body of the final EA.<sup>183</sup> ~~Each response shall be sent directly to the~~  
18 ~~person commenting with a copy to the office.~~<sup>184</sup> ~~A copy of each response shall be sent to~~  
19 ~~the approving agency for its timely preparation of a determination and notice thereof~~  
20 ~~pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.~~<sup>185</sup>

21 <sup>176</sup> Clarifies that the comments are included in the final EA.

22 <sup>177</sup> Housekeeping.

23 <sup>178</sup> Housekeeping.

24 <sup>179</sup> Because the responses are included in the final EA, it is not necessary to send an individual response  
25 letter to each person who comments. The requirement to send a response to every individual person  
26 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via  
27 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with  
28 NEPA practice, which allows grouping of identical or similar comments and providing one response that  
29 covers the issues raised in the identical or similar comments. Because individual responses would no  
30 longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

31 <sup>180</sup> The applicant prepares the document so has the responsibility to incorporate the comments and  
32 responses into the document.

33 <sup>181</sup> Clarifies that the comments are incorporated into the final EA.

34 <sup>182</sup> Housekeeping.

35 <sup>183</sup> Because the responses are included in the final EA, it is not necessary to send an individual response  
36 letter to each person who comments. The requirement to send a response to every individual person  
37 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via  
38 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with  
39 NEPA practice, which allows grouping of identical or similar comments and providing one response that  
40 covers the issues raised in the identical or similar comments.

41 <sup>184</sup> Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of  
42 the response is no longer relevant.

43 <sup>185</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement  
44 is no longer applicable.

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- 1 (e) An addendum document to a draft ~~environmental assessment~~ EA shall reference the  
2 original draft ~~environmental assessment~~ EA it attaches to and shall comply with all  
3 applicable public review and comment requirements set forth in sections 11-200-3 and  
4 11-200-9.
- 5 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp: HRS §343-3, 343-5,  
6 343-6)

## §11-200-10 Contents of an Environmental Assessment

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

- 5 (1) Identification of applicant or proposing agency;
- 6 (2) Identification of approving agency, if applicable;
- 7 (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~  
8 preparing<sup>186</sup> the assessment;
- 9 (4) General description of the action's technical, economic, social, and  
10 environmental characteristics;
- 11 (5) Summary description of the affected environment, including suitable and  
12 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
13 Floodway Boundary Maps, or United States Geological Survey topographic  
14 maps;
- 15 (6) Identification and ~~summary~~ analysis<sup>187</sup> of impacts and alternatives considered;
- 16 (7) Proposed mitigation measures;
- 17 (8) Agency determination or, for draft ~~environmental assessments~~ EAs only, an  
18 anticipated determination;
- 19 (9) Findings and reasons supporting the agency determination or anticipated  
20 determination;
- 21 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be  
22 prepared;
- 23 (11) List of all required<sup>188</sup> permits and approvals (State, federal, county) ~~required and~~  
24 identification of which are considered to be discretionary<sup>189</sup>; and
- 25 (12) Written comments and responses to the comments ~~under~~ received pursuant to<sup>190</sup>  
26 the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or  
27 11-200-15, and statutorily prescribed public review periods.

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28 <sup>186</sup> Uses more accurate time consistent with language in the rules..

29 <sup>187</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood  
30 to mean a lengthy discussion. It means that the impact discussion section should identify an impact and  
31 provide a detailed discussion sufficient to support a conclusion. Summaries tend to be assertions of  
32 impact and the degree of significance without presenting a supporting argument.

33 <sup>188</sup> Housekeeping. Moves the word required from the end of the clause to before the word "permits".

34 <sup>189</sup> Adds identification of approvals that are considered discretionary. This helps to inform why an  
35 applicant is undergoing chapter 343, HRS, and when a proposed action has reached "substantial  
36 commencement" for the purposes of a supplemental EIS.

37 <sup>190</sup> Housekeeping.

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- 1 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),
- 2 343-6)

**§11-200-11 REPEALED.**

- 3 [R AUG 31 1996]

## §11-200-11.1 Notice of Determination for Draft Environmental Assessments

- 1 (a) After<sup>191</sup>  
2 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>192</sup> ~~an environmental assessment~~  
3 ~~a draft EA,~~ and<sup>193</sup>  
4 (2) ~~reviewing~~ Reviewing any public and agency comments, if any, and<sup>194</sup>  
5 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
6 if the proposing agency or the approving agency anticipates that the proposed action is  
7 not likely to have a significant effect, ~~it~~ the proposing agency or approving agency<sup>195</sup> shall  
8 issue a notice of determination ~~which that~~<sup>196</sup> shall be an anticipated ~~negative declaration~~  
9 FONSI subject to the public review provisions of section 11-200-9.1.
- 10 (b)<sup>197</sup> The proposing agency or approving agency shall also file ~~such the~~<sup>198</sup> notice and  
11 supporting draft EA<sup>199</sup> with the office as early as possible after the determination is made  
12 pursuant to and in accordance with section 11-200-9,<sup>200</sup> and the requirements in  
13 subsection (c)<sup>201</sup> ~~along with four copies of the supporting environmental assessment~~<sup>202</sup>.  
14 ~~In addition to the above, the anticipated negative declaration determination for any~~  
15 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~  
16 applicant actions, the approving agency shall also send the anticipated FONSI to the  
17 applicant.<sup>203</sup>

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18 <sup>191</sup> Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to  
19 make the language clearer.

20 <sup>192</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare  
21 documents instead of the approving agency.

22 <sup>193</sup> Housekeeping. Specifies draft EA.

23 <sup>194</sup> Housekeeping.

24 <sup>195</sup> Housekeeping.

25 <sup>196</sup> Housekeeping.

26 <sup>197</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

27 <sup>198</sup> Housekeeping.

28 <sup>199</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the  
29 final EA. Electronic documentation can be submitted.

30 <sup>200</sup> Housekeeping.

31 <sup>201</sup> Housekeeping.

32 <sup>202</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the  
33 final EA. Electronic documentation can be submitted.

34 <sup>203</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant  
35 directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

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- 1 (bc) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
2 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
3 of receipt by the office in accordance with section 11-200-3.
- 4 (ed) The notice of determination shall indicate in a concise manner:  
5 (1) Identification of the<sup>204</sup> applicant or proposing agency;  
6 (2) Identification of the approving agency or<sup>205</sup> accepting authority;  
7 (3) ~~Brief A brief~~<sup>206</sup> description of the<sup>207</sup> proposed action;  
8 (4) ~~Determination~~ The determination<sup>208</sup>;  
9 (5) Reasons supporting the<sup>209</sup> determination; and  
10 (6) ~~Name~~ The name<sup>210</sup>, title, contact information, including the email address,  
11 physical<sup>211</sup> address, and phone number of contact person for further information.
- 12 (de) When an agency withdraws a document, determination, or both<sup>212</sup> pursuant to ~~its~~ the  
13 agency's<sup>213</sup> rules, the agency shall submit to the office a written letter informing the office  
14 of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
15 with section 11-200-3.
- 16 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

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17 <sup>204</sup> Housekeeping.

18 <sup>205</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for  
19 EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

20 <sup>206</sup> Housekeeping.

21 <sup>207</sup> Housekeeping.

22 <sup>208</sup> Housekeeping.

23 <sup>209</sup> Housekeeping.

24 <sup>210</sup> Housekeeping.

25 <sup>211</sup> Includes email as a requirement for contact information. Most communication is done by email so  
26 providing that is just as important as a phone number or physical mail address.

27 <sup>212</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a  
28 determination (i.e., EISPN or FONSI).

29 <sup>213</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules;  
30 determinations rest with the agency and are made pursuant to that agency's rules, procedures, and  
31 practices.

## §11-200-11.2 Notice of Determination for Final Environmental Assessments

- 1 (a) After<sup>214</sup>  
2 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>215</sup> a final environmental  
3 assessment EA,  
4 (2) ~~reviewing~~ Reviewing any public and agency comments, if any, and<sup>216</sup>  
5 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
6 the proposing agency or the approving agency shall issue ~~one of the following notices a~~  
7 notice<sup>217</sup> of determination for an EISPN or FONSI<sup>218</sup> in accordance with section  
8 11-200-9(a) or 11-200-9(b), and file the notice with the office addressing the  
9 requirements in subsection (c), along with four copies of the supporting final  
10 environmental assessment,<sup>219</sup> ~~provided that in addition to the above, all notices of~~  
11 ~~determination for any applicant action shall be mailed to the requesting applicant by the~~  
12 ~~approving agency:~~<sup>220</sup>
- 13 (4b<sup>221</sup>) ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or  
14 approving agency determines that a proposed action may have a significant effect, it  
15 shall issue a notice of determination ~~which that~~ shall be an environmental impact  
16 statement preparation notice EISPN and such notice shall be filed as early as possible  
17 ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>222</sup>.
- 18 (2c) ~~Negative declaration~~ FONSI. If the proposing agency or approving agency determines  
19 that a proposed action is not likely to have a significant effect, it shall issue a notice of  
20 determination ~~which that~~<sup>223</sup> shall be a negative declaration FONSI, and the proposing  
21 agency or approving agency shall file such notice with the office as early as possible  
22 ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>224</sup>.

23 <sup>214</sup> Housekeeping. Breaks out three conditions into 3 items and capitalizes each of the numbered items to  
24 make the language clearer.

25 <sup>215</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare  
26 documents instead of the approving agency.

27 <sup>216</sup> Housekeeping.

28 <sup>217</sup> Housekeeping.

29 <sup>218</sup> Clarifies which of two determinations is to be issued.

30 <sup>219</sup> Removes unnecessary language on final EA filing requirements

31 <sup>220</sup> This requirement is now addressed in the new proposed paragraph D.

32 <sup>221</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

33 <sup>222</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

34 <sup>223</sup> Housekeeping.

35 <sup>224</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

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- 1 (d) The proposing agency or approving agency shall file the notice and the supporting final  
2 EA with the office as early as possible after the determination is made in accordance  
3 with section 11-200-9, addressing the requirements in subsection (f).<sup>225</sup> For applicant  
4 actions, the approving agency shall send the notice of determination for an EISPN or  
5 FONSI to the applicant.<sup>226</sup>
- 6 (be) The office shall publish the appropriate notice of determination in the periodic bulletin  
7 following receipt of the documents in subsection (a) by the office in accordance with  
8 section 11-200-3.
- 9 (ef) The notice of determination for a FONSI<sup>227</sup> shall indicate in a concise manner:  
10 (1) Identification of the<sup>228</sup> applicant or proposing agency;  
11 (2) Identification of the approving agency or<sup>229</sup> accepting authority;  
12 (3) Brief A brief<sup>230</sup> description of the<sup>231</sup> proposed action;  
13 (4) Determination The determination<sup>232</sup>;  
14 (5) Reasons supporting the<sup>233</sup> determination; and  
15 (6) Name The name<sup>234</sup>, title, contact information, including the email address,  
16 physical<sup>235</sup> address, and phone number of contact person for further information.  
17 The notice of determination for an EISPN shall be prepared pursuant to section  
18 11-200-15.<sup>236</sup>

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19 <sup>225</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal  
20 requirement to one copy of the notice of determination and one copy of the final EA. Electronic  
21 documentation can be submitted.

22 <sup>226</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant  
23 directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

24 <sup>227</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in  
25 section 11-200-15.

26 <sup>228</sup> Housekeeping.

27 <sup>229</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for  
28 EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

29 <sup>230</sup> Housekeeping.

30 <sup>231</sup> Housekeeping.

31 <sup>232</sup> Housekeeping.

32 <sup>233</sup> Housekeeping.

33 <sup>234</sup> Housekeeping.

34 <sup>235</sup> Includes email as a requirement for contact information. Most communication is done by email so  
35 providing that is just as important as a phone number or physical mail address.

36 <sup>236</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS  
37 concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the  
38 EISPN is identical.

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- 1 (dg) When an agency withdraws a document, determination, or both<sup>237</sup> pursuant to ~~its~~ the  
2 agency's<sup>238</sup> rules, the agency shall submit to the office a written letter informing the office  
3 of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
4 with section 11-200-3.
- 5 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

---

6 <sup>237</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a  
7 determination (i.e., EISPN or FONSI).

8 <sup>238</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules;  
9 determinations rest with the agency and are made pursuant to that agency's rules, procedures, and  
10 practices.

## §11-200-12 Significance Criteria

- 1 (a) In considering the significance of potential environmental effects, agencies shall consider  
2 the sum of effects on the quality of the environment;<sup>239</sup> and shall evaluate the overall and  
3 cumulative effects of an action.
- 4 (b) In determining whether an action may have a significant effect on the environment, the  
5 agency shall consider every phase of a proposed action, the expected consequences,  
6 both primary and secondary, and the cumulative as well as the short-term and long-term  
7 effects of the action. In most instances, an action shall be determined to have a  
8 significant effect on the environment if it:
- 9 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~  
10 ~~cultural resource~~ Irrevocably commits a natural resource<sup>240</sup>;
- 11 (2) Curtails the range of beneficial uses of the environment;
- 12 (3) Conflicts with the state's ~~long-term~~ environmental policies or long-term  
13 environmental<sup>241</sup> goals and guidelines as expressed in chapter 344, HRS, or  
14 other laws,<sup>242</sup> and any revisions thereof and amendments thereto, court  
15 decisions, or executive orders;
- 16 (4) Substantially Adversely<sup>243</sup> affects the economic welfare, or social welfare, or  
17 cultural practices<sup>244</sup> of the community or State;
- 18 (5) Substantially affects public health;
- 19 (6) Involves substantial secondary impacts, such as population changes or effects  
20 on public facilities;
- 21 (7) Involves a substantial degradation of environmental quality;
- 22 (8) Is individually limited but cumulatively has considerable effect upon the  
23 environment or involves a commitment for larger actions;
- 24 (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- 25 (10) Detrimentially affects air or water quality or ambient noise levels;
- 26 (11) Affects or is likely to suffer damage by being located in an environmentally  
27 sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area,  
28 geologically hazardous land, estuary, fresh water, or coastal waters;

29 <sup>239</sup> Housekeeping.

30 <sup>240</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

31 <sup>241</sup> Revises language to match the definition of "significance" in Section 343-2, HRS.

32 <sup>242</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is  
33 not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals  
34 such as the State Planning Act.

35 <sup>243</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language is  
36 not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals  
37 such as the State Planning Act.

38 <sup>244</sup> Revises language to match the definition of "significance" in Section 343-2, HRS. Statutory language  
39 was amended by Act 50 (2000) to include cultural practices as part of significance.

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- 1           (12)   Substantially affects scenic vistas and viewplanes identified in county or state  
2                   plans or studies; or,  
3           (13)   Requires substantial energy consumption.

4   [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)

## §11-200-13 Consideration of Previous Determinations and Accepted Statements

- 1 (a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action  
2 or receives a request for approval, the agency may consider and, when applicable and  
3 appropriate, incorporate by reference, in whole or in part, previous determinations of  
4 whether ~~a statement~~ an EIS is required, and previously accepted ~~statements~~ EIS.
- 5 (b) Previous determinations and previously accepted ~~statements~~ EISs may be incorporated  
6 by applicants and agencies whenever the information contained therein is pertinent to  
7 the decision at hand and has logical relevancy and bearing to the action being  
8 considered.
- 9 (c) Agencies shall not, without considerable pre-examination and comparison, use past  
10 determinations and previous ~~statement~~ EISs to apply to the action at hand. The action  
11 for which a determination is sought shall be thoroughly reviewed prior to the use of  
12 previous determinations and previously accepted ~~statements~~ EISs. Further, when  
13 previous determinations and previous ~~statements~~ EISs are considered or incorporated  
14 by reference, they shall be substantially similar to and relevant to the action then being  
15 considered.
- 16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

## §11-200-14 General Provisions

2 Chapter 343, HRS, directs that in both agency and applicant actions where ~~statements~~ EISs are  
3 required, the preparing party shall prepare the EIS, submit it for review and comments, and  
4 revise it, taking into account all critiques and responses. Consequently, the EIS process  
5 involves more than the preparation of a document; it involves the entire process of research,  
6 discussion, preparation of a statement, and review. The EIS process shall involve at a minimum:

- 7 ~~(1)~~<sup>245</sup> ~~identifying~~ Identifying environmental concerns,
- 8 ~~(2)~~ Conducting no fewer than one EIS public scoping meeting.<sup>246</sup>
- 9 ~~(3)~~ ~~obtaining~~ Obtaining various relevant data,
- 10 ~~(4)~~ ~~conducting~~ Conducting necessary studies,
- 11 ~~(5)~~ ~~receiving~~ Receiving public and agency input,
- 12 ~~(6)~~ ~~evaluating~~ Evaluating alternatives, and
- 13 ~~(7)~~ ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing  
14 adverse impacts.

15 An EIS is meaningless without the conscientious application of the EIS process as a whole, and  
16 shall not be merely a self-serving recitation of benefits and a rationalization of the proposed  
17 action. Agencies shall ensure that ~~statements~~ EISs are prepared at the earliest opportunity in  
18 the planning and decision-making process. This shall assure an early open forum for discussion  
19 of adverse effects and available alternatives, and that the decision-makers will be enlightened to  
20 any environmental consequences of the proposed action prior to decision making<sup>247</sup>.

21 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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22 <sup>245</sup> Housekeeping. Breaks the paragraph up and helps to see the minimum elements of the EIS process.

23 Renumbers paragraphs based on addition of public scoping meeting.

24 <sup>246</sup> Requires at least one public scoping meeting for an EIS.

25 <sup>247</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

## §11-200-15 Consultation Prior to Filing a Draft Environmental Impact Statement

- 1 (a)<sup>248</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS  
2 without first requiring an EA, shall indicate in a concise manner:
- 3 (1) Identification of the proposing agency or applicant;  
4 (2) Identification of the accepting authority;  
5 (3) The determination;  
6 (4) Reasons supporting the determination;  
7 (5) A description of the proposed action and its location;  
8 (6) A description of the affected environment and include regional, location, and site  
9 maps;  
10 (7) Possible alternatives to the proposed action;  
11 (8) The proposing agency's or applicant's proposed scoping process, including when  
12 and where the EIS public scoping meeting or meetings will be held;  
13 (9) The name, title, contact information, including the email address, physical  
14 address, and phone number of contact person for further information.<sup>249</sup>
- 15 (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all  
16 appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>250</sup> citizen groups, and  
17 concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end,  
18 agencies and applicants shall endeavor to develop a fully acceptable draft<sup>251</sup> EIS prior to  
19 the time the EIS is filed with the office, through a full and complete consultation process,  
20 and shall not rely solely upon the review process to expose environmental concerns. ~~At~~  
21 ~~the discretion of the proposing agency or an applicant, a~~ A public scoping meeting to  
22 ~~receive comments on the final environmental assessment (for the EIS preparation notice~~  
23 ~~determination) setting forth~~ addressing the scope of the draft EIS ~~may shall~~<sup>252</sup> be held  
24 within the thirty-day public review and comment period in subsection (b)(c), ~~provided that~~  
25 ~~the proposing agency or applicant shall treat oral and written comments received at such~~  
26 ~~a meeting as indicated in subsection (d)~~<sup>253</sup>.

27 <sup>248</sup> Creates a new paragraph and renumbers subsequent paragraphs.

28 <sup>249</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going  
29 directly to preparing the EIS.

30 <sup>250</sup> Housekeeping.

31 <sup>251</sup> Clarifies that the document is a draft EIS.

32 <sup>252</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the  
33 scope of the draft EIS should be.

34 <sup>253</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to  
35 add clarity to the comment submitted and removes the preparer's interpretation of oral comments.

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- 1    ~~(bc)~~    Upon publication of a ~~preparation notice~~ an EISPN in the periodic bulletin, agencies,  
2            groups, or individuals shall have a period of thirty days from the initial issue date in  
3            which to request to become a consulted party and to make written comments regarding  
4            the environmental effects of the proposed action. Upon written request by the consulted  
5            party and upon good cause shown, the approving agency or accepting authority may  
6            extend the period for comments for a period not to exceed thirty days.
- 7    ~~(ed)~~    Upon receipt of the request, the proposing agency or applicant shall provide the  
8            consulted party with ~~a copy of the environmental assessment or requested portions~~  
9            ~~thereof and~~<sup>254</sup> ~~the environmental impact statement preparation notice~~ EISPN.  
10           Additionally, the proposing agency or applicant may provide any other information it  
11           deems necessary. The proposing agency or applicant may also contact other agencies,  
12           groups, or individuals which it feels may provide pertinent additional information.
- 13   ~~(de)~~    Any substantive written<sup>255</sup> comments received by the proposing agency or applicant  
14           pursuant to this section shall be responded to in writing and as appropriate, incorporated  
15           into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS  
16           with the approving agency or accepting authority. Letters submitted which contain no  
17           comments on the project but only serve to acknowledge receipt of the document do not  
18           require a written response. Acknowledgement of receipt of these items must be included  
19           in the ~~final environmental assessment or~~<sup>256</sup> ~~final statement~~ draft EIS<sup>257</sup>.
- 20   [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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21   <sup>254</sup> Removes the requirement to provide a copy because the EISPN is available online to anyone at any  
22   time.

23   <sup>255</sup> Adds written as a requirement for being responded to and reproduced in the draft EIS.

24   <sup>256</sup> Removes final EA requirement because a final EA may not have been prepared.

25   <sup>257</sup> Replaces final EIS with draft EI, mirroring the previous sentence.

## §11-200-16 Content Requirements

1 ~~For draft and final EISs. The environmental impact statement~~ the document<sup>258</sup> shall contain an  
2 explanation of the environmental consequences of the proposed action, pursuant to section  
3 11-200-17<sup>259</sup>. The contents shall fully declare the environmental implications of the proposed  
4 action and shall discuss all ~~relevant and feasible~~ reasonably foreseeable<sup>260</sup> consequences of the  
5 action. In order that the public can be fully informed and that the agency can make a sound  
6 decision based upon the full range of responsible opinion on environmental effects, ~~a statement~~  
7 an EIS shall include responsible opposing views, if any, on significant environmental issues  
8 raised by the proposal.

9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
10 343-6)

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11 <sup>258</sup> Clarifies that Section 16 applies to both draft and final EISs.

12 <sup>259</sup> Explicitly connects HAR §11-200-16 and §11-200-17.

13 <sup>260</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more  
14 case history, and federal guidance to provide clarity on the desired standard.

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## **§11-200-17 Content Requirements; Draft Environmental Impact Statement**

- 1 (a) The draft EIS, at a minimum, shall contain the information required in this section.
- 2 (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the  
3 following:
- 4 (1) Brief description of the action;
- 5 (2) Significant beneficial and adverse impacts (including cumulative impacts and  
6 secondary impacts);
- 7 (3) Proposed mitigation measures;
- 8 (4) Alternatives considered;
- 9 (5) Unresolved issues; ~~and~~
- 10 (6) Compatibility with land use plans and policies, and listing of permits or  
11 approvals; ~~and~~<sup>261</sup>
- 12 (7) A list of relevant documents, including EAs and EISs, used to identify potential  
13 segmentation or cumulative impacts.<sup>262</sup>
- 14 (c) The draft EIS shall contain a table of contents.
- 15 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~  
16 the<sup>263</sup> purpose and need for the proposed action.
- 17 (e) The draft EIS shall contain a project description which shall include the following  
18 information, but need not supply extensive detail beyond that needed for evaluation and  
19 review of the environmental impact:
- 20 (1) A detailed map (preferably a United States Geological Survey topographic map,  
21 Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a  
22 related regional map;
- 23 (2) ~~Statement of objectives~~ Objectives of the proposed action<sup>264</sup>;

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24 <sup>261</sup> Housekeeping.

25 <sup>262</sup> This list is meant to help readers be aware that the proponent considered other actions that may be  
26 relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other  
27 documents to the attention of the proponent or decision maker. The list could be included in references,  
28 which is already a content requirement.

29 <sup>263</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used  
30 in a different sense here.

31 <sup>264</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used  
32 in a different sense here.

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- 1 (3) General description of the action's technical, economic, social, cultural,<sup>265</sup> and  
2 environmental characteristics;
- 3 (4) Use of public funds or lands for the action;
- 4 (5) Phasing and timing of action;
- 5 (6) Summary technical data, diagrams, and other information necessary to permit an  
6 evaluation of potential environmental impact by commenting agencies and the  
7 public; and
- 8 (7) Historic perspective.

9 (f) The draft EIS shall describe in a separate and distinct section reasonable<sup>266</sup> alternatives  
10 ~~which that could attain the objectives of the action, regardless of cost, in sufficient detail~~  
11 ~~to explain why they were rejected and for alternatives that were eliminated from detailed~~  
12 ~~study, briefly discuss the reasons for eliminating them~~<sup>267</sup>. The section shall include a  
13 rigorous exploration and objective evaluation of the environmental impacts of all such  
14 alternative actions. Particular attention shall be given to alternatives that might enhance  
15 environmental quality or avoid, reduce, or minimize some or all of the adverse  
16 environmental effects, costs, and risks. Examples of alternatives include:

- 17 (1) The alternative of no action;
- 18 (2) Alternatives requiring actions of a significantly different nature ~~which that~~ would  
19 provide similar benefits with different environmental impacts;
- 20 (3) Alternatives related to different designs or details of the proposed actions ~~which~~  
21 ~~that~~ would present different environmental impacts;
- 22 (4) The alternative of postponing action pending further study; and,
- 23 (5) Alternative locations for the proposed project.

24 In each case, the analysis shall be sufficiently detailed to allow the comparative  
25 evaluation of the environmental benefits, costs, and risks of the proposed action and  
26 each reasonable alternative. For any agency actions, the discussion of alternatives shall  
27 include, where relevant, those alternatives not within the existing authority of the agency.

28 (g) The draft EIS shall include a description of the environmental setting, including a  
29 description of the environment in the vicinity of the action, as it exists before  
30 commencement of the action, from both a local and regional perspective. Special  
31 emphasis shall be placed on environmental resources that are rare or unique to the  
32 region and the project site (including natural or human-made resources of historic,

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33 <sup>265</sup> Adds cultural to the characteristics, in line with Act 50 (2000).

34 <sup>266</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate  
35 all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss  
36 the reasons for their having been eliminated.

37 <sup>267</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate  
38 all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss  
39 the reasons for their having been eliminated.

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1 cultural,<sup>268</sup> archaeological, or aesthetic significance); specific reference to related  
2 projects, public and private, existent or planned in the region shall also be included for  
3 purposes of examining the possible overall cumulative impacts of such actions.  
4 Proposing agencies and applicants shall also identify, where appropriate, population and  
5 growth characteristics of the affected area, ~~and~~ any population and growth assumptions  
6 used to justify the action, ~~and determine any~~<sup>269</sup> secondary population and growth  
7 impacts resulting from the proposed action and its alternatives. In any event, it is  
8 essential that the sources of data used to identify, qualify, or evaluate any and all  
9 environmental consequences be expressly noted in the draft EIS<sup>270</sup>.

10 (h) The draft EIS shall include a ~~statement~~ description<sup>271</sup> of the relationship of the proposed  
11 action to land use and resource<sup>272</sup> plans, policies, and controls for the affected area.  
12 Discussion of how the proposed action may conform or conflict with objectives and  
13 specific terms of approved or proposed land use and resource<sup>273</sup> plans, policies, and  
14 controls, if any, for the area affected shall be included. Where a conflict or inconsistency  
15 exists, the ~~statement~~ draft EIS<sup>274</sup> shall describe the extent to which the agency or  
16 applicant has reconciled its proposed action with the plan, policy, or control, and the  
17 reasons why the agency or applicant has decided to proceed, notwithstanding the  
18 absence of full reconciliation. The draft EIS shall also contain a list of necessary  
19 approvals, required for the action, from governmental agencies, boards, or commissions  
20 or other similar groups having jurisdiction. The status of each identified approval shall  
21 also be described.

22 (i) The draft EIS shall include ~~a statement~~ an analysis<sup>275</sup> of the probable impact of the  
23 proposed action on the environment, and impacts of the natural or human environment  
24 on the project, which shall include consideration of all phases of the action and  
25 consideration of all consequences on the environment; including direct and indirect  
26 effects ~~shall be included~~<sup>276</sup>. The interrelationships and cumulative environmental impacts  
27 of the proposed action and other related projects shall be discussed in the draft EIS. It  
28 ~~should be realized~~ The draft EIS should recognize<sup>277</sup> that several actions, in particular

29 <sup>268</sup> Adds cultural, in line with Act 50 (2000).

30 <sup>269</sup> Housekeeping.

31 <sup>270</sup> Housekeeping.

32 <sup>271</sup> Removes the word statement, which is a technical word in chapter 343, HRS, that refers to an EIS.

33 Uses "description" similar to other paragraphs.

34 <sup>272</sup> Includes natural resource plans such as water management plans.

35 <sup>273</sup> Includes natural resource plans such as water management plans.

36 <sup>274</sup> Clarifies that this applies to draft EISs.

37 <sup>275</sup> Removes the word statement, which is a technical word in chapter 343, HRS, that refers to an EIS.

38 Emphasizes that an analysis is important for the impact discussion.

39 <sup>276</sup> Housekeeping.

40 <sup>277</sup> Housekeeping.

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1 those that involve the construction of public facilities or structures (e.g., highways,  
2 airports, sewer systems, water resource projects, etc.) may well stimulate or induce  
3 secondary effects. These secondary effects may be equally important as, or more  
4 important than, primary effects, and shall be thoroughly discussed to fully describe the  
5 probable impact of the proposed action on the environment. The population and growth  
6 impacts of an action shall be estimated if expected to be significant, and an evaluation  
7 shall be<sup>278</sup> made of the effects of any possible change in population patterns or growth  
8 upon the resource base, including but not limited to land use, water, and public services,  
9 of the area in question. Also, if the proposed action constitutes a direct or indirect source  
10 of pollution as determined by any governmental agency, necessary data regarding these  
11 impacts<sup>279</sup> shall be incorporated into the EIS. The significance of the impacts shall be  
12 discussed in terms of subsections (j), (k), (l), and (m).

13 (j) The draft EIS shall include in a separate and distinct section a description of the  
14 relationship between local short-term uses of humanity's environment and the  
15 maintenance and enhancement of long-term productivity. The extent to which the  
16 proposed action involves trade-offs among short-term and long-term gains and losses  
17 shall be discussed. The discussion shall include the extent to which the proposed action  
18 forecloses future options, narrows the range of beneficial uses of the environment, or  
19 poses long-term risks to health or safety. In this context, short-term and long-term do not  
20 necessarily refer to any fixed time periods, but shall be viewed in terms of the  
21 environmentally significant consequences of the proposed action.

22 (k) The draft EIS shall include in a separate and distinct section a description of all  
23 irreversible and irretrievable commitments of resources that would be involved in the  
24 proposed action should it be implemented. Identification of unavoidable impacts and the  
25 extent to which the action makes use of non-renewable resources during the phases of  
26 the action, or irreversibly curtails the range of potential uses of the environment shall  
27 also be included. The possibility of environmental accidents resulting from any phase of  
28 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~  
29 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~  
30 ~~natural and cultural resources committed to loss or destruction by the action.~~  
31 "Resources" shall be construed to also mean the natural and cultural resources  
32 irreversibly and irretrievably committed to the action and not only to the labor and  
33 materials committed to the action.<sup>280</sup>

34 (l) The draft EIS shall address all probable adverse environmental effects ~~which~~ that cannot  
35 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats

36 <sup>278</sup> Housekeeping.

37 <sup>279</sup> Clarifies what the data should be about.

38 <sup>280</sup> Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

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1 to public health, or other consequences adverse to environmental goals and guidelines  
2 established by environmental response laws, coastal zone management laws, pollution  
3 control and abatement laws, and environmental policy ~~such as that~~ including those<sup>281</sup>  
4 found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J,  
5 342L, 342N, 342P, and 344, HRS, ~~shall be included, including and~~<sup>282</sup> those effects  
6 discussed in other ~~actions~~ subsections of this ~~paragraph~~ section<sup>283</sup> ~~which that~~ are  
7 adverse and unavoidable under the proposed action. Also, the rationale for proceeding  
8 with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in  
9 this section. The draft EIS shall indicate what other interests and considerations of  
10 governmental policies are thought to offset the adverse environmental effects of the  
11 proposed action. The ~~statement~~ EIS shall also indicate the extent to which these stated  
12 countervailing benefits could be realized by following reasonable alternatives to the  
13 proposed action that would avoid some or all of the adverse environmental effects.

14 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or  
15 reduce ~~impact~~ impacts<sup>284</sup>, including provision for compensation for losses of cultural,  
16 community, historical, archaeological, fish and wildlife resources, including the  
17 acquisition of land, waters, and interests therein. Description of any mitigation measures  
18 included in the action plan to reduce significant, unavoidable, adverse impacts to  
19 insignificant levels, and the basis for considering these levels acceptable shall be  
20 included. Where a particular mitigation measure has been chosen from among several  
21 alternatives, the measures shall be discussed and reasons given for the choice made.  
22 ~~Included~~ The draft EIS shall include, where possible ~~and appropriate~~<sup>285</sup>, ~~should be~~<sup>286</sup>  
23 specific reference to the timing of each step proposed to be taken in ~~the any~~<sup>287</sup> mitigation  
24 process, what performance bonds, if any, may be posted, and what other provisions are  
25 proposed to assure that the mitigation measures will in fact be taken.

26 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved  
27 issues and contains either a discussion of how such issues will be resolved prior to  
28 commencement of the action, or what overriding reasons there are for proceeding  
29 without resolving the problems.

30 (o) The draft EIS shall include a separate and distinct section that contains a list identifying  
31 all governmental agencies, other organizations and private individuals consulted in

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32 <sup>281</sup> Housekeeping.

33 <sup>282</sup> Housekeeping.

34 <sup>283</sup> Removes

35 <sup>284</sup> Housekeeping.

36 <sup>285</sup> Removes redundant language.

37 <sup>286</sup> Housekeeping.

38 <sup>287</sup> Changes reference to any mitigation measure process that may result from the analysis.

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1 preparing the statement, and the identity of the persons, firms, or agency preparing the  
2 statement, by contract or other authorization, shall be disclosed.

3 (p) The draft EIS shall include a separate and distinct section that contains reproductions of  
4 all ~~substantive~~ written comments and ~~responses~~ made during the ~~consultation process~~  
5 thirty-day consultation period pursuant to section 11-200-15, responses to those  
6 comments, and a summary of any EIS public scoping meetings.<sup>288</sup> A list of those  
7 persons or agencies who were consulted and had no comment shall be included in the  
draft EIS.

8 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
9 343-6)

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10 <sup>288</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of  
11 the public scoping meeting (or meetings).

## §11-200-18 Content Requirements; Final Environmental Impact Statement

1 The final EIS shall consist of:

- 2 (1) The draft EIS prepared in compliance with section 11-200-17, as<sup>289</sup> revised to  
3 incorporate substantive<sup>290</sup> comments received during the consultation and review  
4 processes;
- 5 (2) Reproductions of all letters written comments received ~~containing substantive~~  
6 ~~questions, comments, or recommendations and, as applicable, summaries of any~~  
7 ~~scoping meetings held~~ during the consultation and review processes<sup>291</sup>;
- 8 (3) A list of persons, organizations, and public agencies commenting on the draft  
9 EIS;
- 10 (4) The responses of the applicant or proposing agency to ~~each substantive~~  
11 ~~question, comment, or recommendation~~ written comments<sup>292</sup> received in the  
12 review and consultation processes; and<sup>293</sup>
- 13 (5) The text of the final EIS ~~which shall be~~<sup>294</sup> written in a format ~~which~~ that allows the  
14 reader to easily distinguish changes made to the text of the draft EIS.

15 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
16 343-6)

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17 <sup>289</sup> Connects this section with the previous section content requirements.

18 <sup>290</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a  
19 comment and new language has been added to allow for grouping of identical or similar comments in the  
20 way that NEPA allows.

21 <sup>291</sup> Aligns language with the EISPN and draft EIS requirements.

22 <sup>292</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a  
23 comment and new language has been added to allow for grouping of identical or similar comments in the  
24 way that NEPA allows.

25 <sup>293</sup> Housekeeping.

26 <sup>294</sup> Housekeeping.

## §11-200-19 Environmental Impact Statement Style

1 In developing the draft and final<sup>295</sup> EIS, preparers shall make every effort to convey the required  
2 information succinctly in a form easily understood, both by members of the public and by public  
3 decision-makers, giving attention to the substance of the information conveyed rather than to  
4 the particular form, or length, or ~~detail~~<sup>296</sup> of the ~~statement~~ EIS. The scope of the ~~statement~~ EIS  
5 may vary with the scope of the proposed action and its impact. Data and analyses in a  
6 statement shall be commensurate with the importance of the impact, and less important material  
7 may be summarized, consolidated, or simply referenced. ~~Statements~~ EISs shall indicate at  
8 appropriate points in the text any underlying studies, reports, and other information obtained  
9 and considered in preparing the ~~statement~~ EIS, including cost benefit analyses and reports  
10 required under other legal authorities. Care shall be taken to concentrate on important issues  
11 and to ensure that the statement remains an essentially self-contained document, capable of  
12 being understood by the reader without the need for undue cross-reference.

13 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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14 <sup>295</sup> Clarifies this section applies to draft and final EISs.

15 <sup>296</sup> Removes detail because detail is already discussed as being commensurate with the potential for  
16 impact.

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## **§11-200-20 Filing of an Environmental Impact Statement**

- 1 (a) The proposing agency or applicant shall file the original ~~(signed)~~<sup>297</sup> draft EIS with the  
2 accepting authority, ~~along with a minimum number of copies determined by the~~  
3 ~~accepting authority~~<sup>298</sup>. Simultaneously, ~~a minimum number of four copies of~~<sup>299</sup> the draft  
4 EIS shall be filed with the office.
- 5 (b) The proposing agency or applicant shall file the original (signed) final EIS with the  
6 accepting authority, ~~along with a minimum number of copies determined by the~~  
7 ~~accepting authority~~<sup>300</sup>. Simultaneously, ~~four copies of~~<sup>301</sup> the final EIS shall be filed with  
8 the office.
- 9 (c) ~~An EIS may be filed at any time at the office by the proposing agency or applicant in~~  
10 ~~accordance with section 11-200-3.~~<sup>302</sup>
- 11 (d~~c~~<sup>303</sup>) The proposing agency or applicant shall sign and date the original copy of the draft or  
12 final EIS and shall indicate that the ~~statement~~ EIS and all ancillary documents were  
13 prepared under the signatory's direction or supervision and that the information  
14 submitted, to the best of the signatory's knowledge fully addresses document content  
15 requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate.
- 16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

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17 <sup>297</sup> Removes "original, signed" as it does not make sense for digital documents.

18 <sup>298</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

19 <sup>299</sup> OEQC only needs one copy, not four.

20 <sup>300</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

21 <sup>301</sup> OEQC only needs one copy, not four.

22 <sup>302</sup> Removes the paragraph because the language is unnecessary.

23 <sup>303</sup> Renumbers the paragraph.

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## **§11-200-21 Distribution**

1 The office shall be responsible for the publication of the notice of availability of the EIS in its  
2 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with  
3 jurisdiction or expertise in certain areas relevant to various actions) ~~and a list of public~~  
4 ~~depositories, which shall include public libraries, where copies of the statements shall be~~  
5 ~~available, and to the extent possible, the .~~ The<sup>304</sup> proposing agency or applicant shall make  
6 copies of the EIS available to individuals requesting the EIS. The office's distribution list may be  
7 developed cooperatively among the applicant or proposing agency, the accepting authority, and  
8 the office; provided that<sup>305</sup> the office shall be responsible for determining the final list. The  
9 applicant or proposing agency shall directly distribute the required copies to those on the  
10 distribution list after the office has verified to the applicant or proposing agency the accuracy of  
11 the distribution list. ~~For final statements, the agency or applicant shall give the commenter an~~  
12 ~~option of requesting a copy of the final EIS or portions thereof.~~<sup>306</sup>

13 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-5,  
14 343-6)

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15 <sup>304</sup> Removes outdated depositories requirement as all documents and determinations are available online  
16 to anyone.

17 <sup>305</sup> Housekeeping.

18 <sup>306</sup> Removes outdated requirement to provide the commenter with an option to request the document or a  
19 portion of it as all documents and determinations are available online to anyone.

**§11-200-22 ~~Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements~~ Public Review and Response Requirements for Draft EISs and Addenda**<sup>307</sup>

- 1 (a) Public review shall not substitute for early and open discussion with interested persons  
2 and agencies,<sup>308</sup> concerning the environmental impacts of a proposed action. Review of  
3 the draft<sup>309</sup> EIS shall serve to provide the public and other agencies an opportunity to  
4 discover the extent to which a proposing agency or applicant has examined  
5 environmental concerns and available alternatives.
- 6 (b) The period for public review and for submitting written comments shall commence ~~as of~~  
7 from the date that<sup>310</sup> notice of availability of the draft EIS is initially issued in the periodic  
8 bulletin and shall continue for a period of forty-five days. Written comments to the  
9 approving agency or accepting authority, whichever is applicable, with a copy of the  
10 comments to the applicant or proposing agency, shall be received or postmarked to the  
11 approving agency or accepting authority, within ~~said the~~<sup>311</sup> forty-five-day comment<sup>312</sup>  
12 period. Any comments outside of the forty-five day comment period need not be  
13 considered or responded to.
- 14 (c) The proposing agency or applicant shall respond ~~in writing~~<sup>313</sup> to the comments received  
15 or postmarked during the forty-five-day review period and incorporate the comments and  
16 responses in the final EIS. The response to comments shall include:  
17 (1) Point-by-point discussion of the validity, significance, and relevance of  
18 comments; and  
19 (2) Discussion as to how each comment was evaluated and considered in ~~planning~~  
20 the proposed action preparing the final EIS<sup>314</sup>.  
21 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.  
22 Response letters reproduced in the text of the final EIS shall indicate verbatim changes  
23 that have been made to the text of the draft EIS. The response shall describe the

24 <sup>307</sup> Rephrases title so that it is clearer that the whole section is about draft EISs.

25 <sup>308</sup> Housekeeping.

26 <sup>309</sup> Clarifies that the document is a draft EIS.

27 <sup>310</sup> Housekeeping.

28 <sup>311</sup> Housekeeping.

29 <sup>312</sup> Clarifies that the forty-five days is for the comment period.

30 <sup>313</sup> Removes phrase because the response must be in the final EIS, which is written.

31 <sup>314</sup> Focus on how the comment is addressed in the final EIS rather than just action.

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1 disposition of significant environmental issues raised (e.g., revisions to the proposed  
2 project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised  
3 when the applicant's or proposing agency's position is at variance with recommendations  
4 and objections raised in the comments shall be addressed in detail, giving reasons why  
5 specific comments and suggestions were not accepted, and factors of overriding  
6 importance warranting an override of the suggestions. If a number of comments are  
7 identical or very similar, the proposing agency or applicant may group the comments and  
8 prepare a single standard response for each group. The comments must be attached to  
9 the final EIS regardless of whether the agency or applicant believes they merit individual  
10 discussion in the body of the final EIS.<sup>315</sup>

11 (d) An addendum document<sup>316</sup> to a draft environmental impact statement EIS shall  
12 reference the original draft environmental impact statement EIS to which<sup>317</sup> it attaches to  
13 <sup>318</sup> and comply with all applicable filing, public review, and comment requirements set  
14 forth in subchapter 7, beginning with section 11-200-14<sup>319</sup>.

15 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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16 <sup>315</sup> Because the responses are included in the final EIS, it is not necessary to send an individual response  
17 letter to each person who comments. The requirement to send a response to every individual person  
18 commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via  
19 publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with  
20 NEPA practice, which allows grouping of identical or similar comments and providing one response that  
21 covers the issues raised in the identical or similar comments. Because individual responses would no  
22 longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

23 <sup>316</sup> Removes the word document as it is unnecessary.

24 <sup>317</sup> Housekeeping.

25 <sup>318</sup> Housekeeping.

26 <sup>319</sup> Clarifies that an addendum must begin with the general provisions and consultation prior to filing a  
27 draft EIS (i.e., and EISPN).

## §11-200-23 Acceptability

- 1 (a) Acceptability of ~~a statement~~ a final EIS<sup>320</sup> shall be evaluated on the basis of whether the  
2 ~~statement~~ final EIS<sup>321</sup>, in its completed form, represents an informational instrument  
3 which fulfills the ~~definition of an EIS intent and provisions of chapter 343, HRS,~~<sup>322</sup> and  
4 adequately discloses and describes all identifiable environmental impacts and  
5 satisfactorily responds to review comments.
- 6 (b) A ~~statement~~ final EIS<sup>323</sup> shall be deemed to be an acceptable document by the accepting  
7 authority or approving agency only if all of the following criteria are satisfied:
- 8 (1) The procedures for assessment, consultation process, review, and the  
9 preparation and submission of the ~~statement~~ EIS, from proposal of the action to  
10 publication of the final EIS,<sup>324</sup> have all been completed satisfactorily as specified  
11 in this chapter;
- 12 (2) The content requirements described in this chapter have been satisfied; and
- 13 (3) Comments submitted during the review process have received responses  
14 satisfactory to the accepting authority, or approving agency, and have been  
15 appropriately<sup>325</sup> incorporated in into the statement final EIS<sup>326</sup>, and comments and  
16 responses have been appended to the final EIS<sup>327</sup>.
- 17 (c) For actions proposed by agencies, the proposing agency may request the office to make  
18 a recommendation regarding the acceptability or non-acceptability of the EIS. In all  
19 cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>328</sup> authorized  
20 representative shall have final authority to accept the EIS. In cases involving only county  
21 funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>329</sup> authorized  
22 representative shall have final authority to accept the EIS. The accepting authority shall  
23 take prompt measures to determine the acceptability or nonacceptability of the  
24 proposing agency's statement. In the event that the action involves ~~both~~ state and

25 <sup>320</sup> Clarifies that the document is a final EIS.

26 <sup>321</sup> Clarifies that the document is a final EIS.

27 <sup>322</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

28 <sup>323</sup> Clarifies that the document is a final EIS.

29 <sup>324</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates  
30 environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

31 <sup>325</sup> Recognizes that not all comments are incorporated into an EIS.

32 <sup>326</sup> Clarifies that the document is a final EIS.

33 <sup>327</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring  
34 comments and responses are appended to the document.

35 <sup>328</sup> Housekeeping.

36 <sup>329</sup> Housekeeping.

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1 county lands ~~or~~ funds, or both lands and funds.<sup>330</sup> the governor or ~~an~~ the governor's<sup>331</sup>  
2 authorized representative shall have final authority to accept the EIS.

3 ~~(d)~~<sup>332</sup> Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate  
4 accepting authority with both the proposing agency and the office. For any non-accepted  
5 EIS, the notice shall contain specific findings and reasons for non-acceptance. The office  
6 shall publish notice of the determination of acceptance or non-acceptance in the periodic  
7 bulletin in accordance with section 11-200-3. Acceptance of a required statement shall  
8 be a condition precedent to the use of state or county lands or funds in implementing the  
9 proposed action.

10 ~~(de)~~ For actions proposed by applicants requiring approval from an agency, the applicant or  
11 accepting authority, which is the approving agency.<sup>333</sup> may request the office to make a  
12 recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If  
13 the office decides to make a recommendation, it shall submit the recommendation to the  
14 applicant and the approving agency within the thirty-day period requiring an approving  
15 agency to determine the acceptability of the final EIS ~~and as~~<sup>334</sup> described in section  
16 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the  
17 agency shall notify the applicant of its determination, and provide specific findings and  
18 reasons. The agency shall also provide a copy of this determination to the office for  
19 publication ~~of a notice~~<sup>335</sup> in the periodic bulletin. Acceptance of the required EIS shall be  
20 a condition precedent to approval of the request and commencement of the proposed  
21 action. An approving agency shall take prompt measures to determine the acceptability  
22 or non-acceptability of the applicant's statement. The agency shall notify the applicant  
23 and the office of the acceptance or non-acceptance of the final EIS within thirty days of  
24 the final EIS submission to the agency<sup>336, 337</sup> provided that the thirty-day period may, at  
25 the request of the applicant, be extended ~~at the request of the applicant~~<sup>338</sup> for a period  
26 not to exceed fifteen days. The request shall be made to the accepting authority in  
27 writing. Upon receipt of an applicant's written<sup>339</sup> request for an extension of the thirty-day  
28 acceptance period, the accepting authority shall notify the office and applicant in writing

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29 <sup>330</sup> Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and  
30 funds.

31 <sup>331</sup> Housekeeping.

32 <sup>332</sup> Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

33 <sup>333</sup> Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

34 <sup>334</sup> Housekeeping.

35 <sup>335</sup> Housekeeping.

36 <sup>336</sup> Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant;  
37 not when the office publishes the final EIS in the periodic bulletin.

38 <sup>337</sup> Housekeeping.

39 <sup>338</sup> Housekeeping.

40 <sup>339</sup> Connects to the previous sentence at the request shall be made in writing.

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1 of its decision to grant or deny the request. The notice shall be accompanied by a copy  
2 of the applicant's request. An extension of the thirty-day acceptance period shall not be  
3 allowed merely for the convenience of the accepting authority. In the event that the  
4 agency fails to make a determination of acceptance or non-acceptance for the statement  
5 within thirty days of the receipt of the final EIS, then the statement shall be deemed  
6 accepted.

7 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision  
8 shall take the form of a revised draft EIS document<sup>340</sup> which shall fully address the  
9 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the  
10 changes made. The requirements for filing, distribution, publication of availability for  
11 review, acceptance or non-acceptance, and notification and publication of acceptability  
12 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,  
13 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised  
14 draft EIS and the subsequent revised final EIS<sup>341</sup> shall be evaluated for acceptability on  
15 the basis of whether it satisfactorily addresses the findings and reasons for  
16 non-acceptance.

17 (fg) A proposing agency or applicant may withdraw an EIS by simultaneously<sup>342</sup> sending a  
18 ~~letter~~ written notification<sup>343</sup> to the office and to the accepting authority<sup>344</sup> informing the  
19 office of the proposing<sup>345</sup> agency's or applicant's withdrawal. Subsequent resubmittal of  
20 the EIS shall meet all requirements for filing, distribution, publication, review,  
21 acceptance, and notification as a new draft<sup>346</sup> EIS.

22 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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23 <sup>340</sup> Housekeeping.

24 <sup>341</sup> Added revised final EIS as the next step following a revised draft EIS.

25 <sup>342</sup> Requires the office and accepting authority to be notified of the withdrawal at the same time.

26 <sup>343</sup> Removes the requirement for a letter and simply requires written notification, such as by email.

27 <sup>344</sup> Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

28 <sup>345</sup> Clarifies that the agency withdrawing the proposal is the proposing agency.

29 <sup>346</sup> Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

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1 Subchapter 8 Appeals

## §11-200-24 Appeals to the Council

2 An applicant, within sixty days after a<sup>347</sup> non-acceptance determination by the approving agency  
3 under section 11-200-23<sup>348</sup> of a statement a final EIS<sup>349</sup> by an agency<sup>350</sup>, may to choose to<sup>351</sup>  
4 appeal the non-acceptance to the council, which within ~~thirty~~ sixty<sup>352</sup> days of receipt of the  
5 appeal, shall notify the applicant of its determination to affirm the approving agency's  
6 non-acceptance or to reverse it<sup>353</sup>. The council chairperson shall include the appeal on the  
7 agenda of the council meeting immediately following the chairperson's receipt of the appeal.  
8 The council shall be deemed to have received the appeal on the date of the meeting for which  
9 the appeal is agendized.<sup>354</sup> In any affirmation or reversal of an appealed non-acceptance, the  
10 council shall provide the applicant and the agency with specific findings and reasons for its  
11 determination. The agency shall abide by the council's decision. Pursuing an appeal by council  
12 does not abrogate an applicant's option under section 343-7(c), HRS, to bring judicial action.<sup>355</sup>

13 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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14 <sup>347</sup> Housekeeping.

15 <sup>348</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

16 <sup>349</sup> Clarifies that the document is a final EIS.

17 <sup>350</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23

18 <sup>351</sup> "Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.

19 <sup>352</sup> Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities  
20 under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

21 <sup>353</sup> Clarifies the Council's determination.

22 <sup>354</sup> Connects receipt of the notice to appeal with the timing of the next EC meeting.

23 <sup>355</sup> Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even  
24 while appealing in front of the council. This provision is in case the council is unable to obtain quorum  
25 after an applicant appeals to the council.

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1 Subchapter 9 National Environmental Policy Act

## **§11-200-25 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS**

2 When ~~the situation occurs where~~<sup>356</sup> a certain action will be subject both to the National  
3 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
4 Public Law 94-83; 42 U.S.C. §4321-4347) and chapter 343, HRS, the following shall occur:

5 (1) The applicant or agency, upon discovery of its proposed action being subject to  
6 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>357</sup>, shall  
7 notify the responsible federal agency, the office, and any agency with a definite  
8 interest in the action (as prescribed by chapter 343, HRS) ~~of the situation.~~<sup>358</sup>

9 (2) Where a federal agency determines that the proposed action is exempt from  
10 review under the NEPA, the determination does not automatically constitute an  
11 exemption for the purposes of this chapter. In such cases, state and county  
12 agencies remain responsible for compliance with this chapter. However, the  
13 federal exemption may be considered in the state or county agency  
14 determination.<sup>359</sup>

15 (3) Where a federal agency issues a FONSI and concludes that a statement is not  
16 required under the NEPA, the determination does not automatically constitute  
17 compliance with this chapter. In such cases, state and county agencies remain  
18 responsible for compliance with this chapter. However, the federal FONSI may be  
19 considered in the state or county agency determination.<sup>360</sup>

20 (24) ~~The National Environmental Policy Act~~ NEPA<sup>361</sup> requires that ~~draft~~<sup>362</sup> statements  
21 EISs<sup>363</sup> be prepared by the responsible federal agency. In the case of actions for  
22 which an EIS pursuant to the NEPA has been prepared by the responsible

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23 <sup>356</sup> Housekeeping.

24 <sup>357</sup> Housekeeping.

25 <sup>358</sup> Housekeeping.

26 <sup>359</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions. State and  
27 county agencies must still make a determination that the action is exempt, requires an EA, or may  
28 proceed directly to preparing an EIS.

29 <sup>360</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may  
30 still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as  
31 the state or county agency has considered HEPA-specific content requirements, either through the federal  
32 FONSI or through its own judgment and experience.

33 <sup>361</sup> Housekeeping.

34 <sup>362</sup> Language is applicable to draft and final.

35 <sup>363</sup> Housekeeping.

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1 federal agency, the draft and final federal statements may be submitted to comply  
2 with this chapter.<sup>364</sup> so long as the federal EIS satisfies the EIS content  
3 requirements of this chapter and is not found to be inadequate under the NEPA  
4 by a court; by the council on environmental quality (CEQ) (or is at issue in  
5 predecision referral to CEQ) under the NEPA regulations; or by the administrator  
6 of the United States Environmental Protection Agency under section 309 of the  
7 Clean Air Act, 41 U.S.C. 1857.<sup>365</sup> The responsible federal agency's supplemental  
8 EIS requirements shall apply in the cases in place of this chapter's supplemental  
9 EIS requirements.<sup>366</sup>

10 (5)<sup>367</sup> When the responsibility of preparing an EIS is delegated to a state or county  
11 agency, this chapter shall apply in addition to federal requirements under the  
12 ~~National Environmental Policy Act~~ NEPA<sup>368</sup>. The office and agencies shall  
13 cooperate with federal agencies to the fullest extent possible to reduce  
14 duplication between federal and state requirements. This cooperation, to the  
15 fullest extent possible, shall include joint ~~environmental impact statements~~ EISs  
16 with concurrent public review and processing at both levels of government.  
17 Where federal law has ~~environmental impact statement~~ EIS requirements in  
18 addition to but not in conflict with this chapter, the office and agencies shall  
19 cooperate in fulfilling the requirements so that one document shall comply with all  
20 applicable laws.

21 (36) In all actions where the use of state land or funds is proposed, the final ~~statement~~  
22 EIS shall be submitted to the governor or an authorized representative. In all  
23 actions when the use of county land or funds is proposed, the final ~~statement~~ EIS  
24 shall be submitted to the mayor, or an authorized representative. The final  
25 ~~statement~~ EIS in these instances shall first be accepted by the governor or mayor  
26 (or an authorized representative), prior to the submission of the same to the  
27 ~~Environmental Protection Agency or~~<sup>369</sup> responsible federal agency.

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28 <sup>364</sup> Based on Massachusetts' language that federally-prepared EISs are sufficient for the purposes of  
29 Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses  
30 this chapter's content requirements. In this case, state and county agencies can provide the information  
31 to the federal preparer for inclusion in its document rather than the state or county agency preparing a  
32 second document.

33 <sup>365</sup> Adds a clause from Washington WAC to ensure that the federally-prepared statement meets federal  
34 standards for quality.

35 <sup>366</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would  
36 be due to federal requirements and that HEPA supplemental requirements would not apply.

37 <sup>367</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the  
38 EIS and one about when a federal agency delegates the responsibility to a state or county agency.

39 <sup>368</sup> Housekeeping.

40 <sup>369</sup> Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the  
41 role of the Environmental Protection Agency in these circumstances.

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1           (47) Any acceptance obtained pursuant to paragraphs ~~(1) to (3)~~ this section<sup>370</sup> shall  
2           satisfy chapter 343, HRS, and no other ~~statement~~ EIS for the proposed action  
3           shall be required.

4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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5 <sup>370</sup> Changes language to “this section” instead of the enumerated paragraphs because existing  
6 paragraphs have been rearranged and additional paragraphs have been added.

1 Proposed New Subchapter X Programmatic EISs

## **Proposed §11-200-XX Programmatic Environmental Impact Statements**<sup>371</sup>

- 2 (a) Proposing agencies may prepare a PEIS on the adoption of a comprehensive plan  
3 prepared in accordance with relevant laws. Impacts of individual actions proposed to be  
4 carried out in conformance with these adopted plans and regulations and the thresholds  
5 or conditions identified in the PEIS may require no or limited further review.
- 6 (b) Approving agencies may allow applicants to prepare a PEIS on the adoption of a  
7 comprehensive plan prepared in accordance with relevant laws. Impacts of individual  
8 actions proposed to be carried out in conformance with these adopted plans and  
9 regulations and the thresholds or conditions identified in the PEIS may require no or  
10 limited further review.
- 11 (c) Upon acceptance of a final programmatic EIS:
- 12 (1) If a PEIS evaluates project-level issues such as precise project footprints or  
13 specific design details, no further compliance with this chapter is required if a  
14 subsequent proposed action will be carried out in conformance with the  
15 conditions and thresholds established for such actions in the PEIS.
- 16 (2) Further chapter 343, HRS, environmental review must be prepared if a  
17 subsequent proposed action was not addressed in the PEIS or the subsequent  
18 proposed action exceeds the thresholds evaluated in the PEIS, and the  
19 subsequent action may have a significant impact on the environmental. Further  
20 review may be in the form of an EIS, EA, or exemption, for specific components  
21 of the proposal.

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22 <sup>371</sup> Provides directions on when environmental review covers a program type of action. Focus is on EISs  
23 and when analysis is sufficient versus further, project-level review is warranted.

## **Proposed §11-200-XX Content Requirements; Draft** **Programmatic Environmental Impact Statement**<sup>372</sup>

- 1 (a) The content requirements for a PEIS shall be the same as those for an EIS set forth in  
2 subchapter 7, with the understanding that the level of detail in a PEIS may be less than  
3 that of a project EIS. The level of detail in a PEIS must be sufficient to allow informed  
4 choice among planning-level alternatives and to develop broad mitigation strategies. A  
5 PEIS should examine the interaction among proposed projects or plan elements, and  
6 assess the cumulative effects. Like a project-level EIS, a PEIS also includes an  
7 examination of alternatives.
- 8 (b) The PEIS may be broader and more general than a project EIS and omit evaluating  
9 project-level issues that are not yet ready for decision at the planning level, or it may  
10 evaluate project-level issues such as precise project footprints or specific design details.
- 11 (c) A PEIS should discuss the logic and rationale for the choices advanced. It may also  
12 include an assessment of specific impacts if such details are available and specific  
13 mitigation measures. It may be based on conceptual information in some cases. It may  
14 discuss in general terms the constraints and sequences of any narrowing of future  
15 options. It may present and analyze in general terms hypothetical scenarios that are  
16 likely to occur.

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17 <sup>372</sup> Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not  
18 have the same level of detail as a project-specific EIS.

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1 Subchapter 10 Supplemental Statements

**§11-200-26 Supplemental EIS<sup>373</sup> General Provisions**

2 (a) ~~A statement~~ An EIS that is accepted with respect to a particular action is usually  
3 qualified by the size, scope, location, intensity, use, and timing of the action, among  
4 other things. ~~A statement~~ An EIS that is accepted with respect to a particular action shall  
5 satisfy the requirements of this chapter and no ~~other supplemental statement~~ EIS for that  
6 proposed action shall be required, ~~to the extent that the action has not changed~~  
7 ~~substantively in size, scope, intensity, use, location or timing, among other things.~~ If  
8 ~~there is any change in any of these characteristics which may have a significant effect,~~  
9 ~~the original statement that was changed shall no longer be valid because an essentially~~  
10 ~~different action would be under consideration and a supplemental statement shall be~~  
11 ~~prepared and reviewed as provided by this chapter.~~ unless:

- 12 (1) The project has changed substantively in the following characteristics: size,  
13 scope, use, location or timing, among other things, which may have a significant  
14 effect; or<sup>374</sup>  
15 (2) New information indicating significant effects, which was not known and could not  
16 have been known at the time the EIS was accepted as complete, becomes  
17 available.<sup>375</sup>

18 (b) In the case of newly discovered information, the decision to require preparation of a  
19 supplemental EIS must be based on the following criteria:

- 20 (1) The information can be from any source.  
21 (2) The information must be newly discovered. It cannot be information that could  
22 have been included in comments filed in the original draft EIS or final EIS.  
23 (3) The information must be important, indicating probably significant environmental  
24 impacts.  
25 (4) The information must not have been addressed in the prior EIS, or must have  
26 been inadequately addressed.<sup>376</sup>

27 (c) As long as there is no change in a proposed action or information indicating significant  
28 effects resulting in individual or cumulative impacts not originally disclosed, the  
29 ~~statement~~ EIS associated with that action shall be deemed to comply with this chapter.

30 <sup>373</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and  
31 programmatic EISs).

32 <sup>374</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

33 <sup>375</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

34 <sup>376</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge  
35 could be used as a reason to require a supplemental EIS.

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- 1 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

## §11-200-27 Supplemental EIS<sup>377</sup> Determination of Applicability

1 The accepting authority or approving agency in coordination with the original accepting authority  
2 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
3 period of five years has elapsed since the acceptance of the final EIS, and the project or  
4 program has not substantially commenced, the accepting authority or approving agency shall  
5 formally re-evaluate the need for a supplemental statement and make a determination of  
6 whether a supplemental statement is required. A written summary of this evaluation and the<sup>378</sup>  
7 This determination will be submitted to the office for publication in the periodic bulletin.  
8 Proposing agencies or applicants shall prepare for public review supplemental ~~statements~~ EISs  
9 whenever the proposed action for which a ~~statement~~ EIS was accepted has been modified to  
10 the extent that new or different environmental impacts are anticipated. A supplemental  
11 ~~statement~~ EIS shall be warranted when the scope of an action has been substantially increased,  
12 when the intensity of environmental impacts will be increased, when the mitigating measures  
13 originally planned are not to be implemented, or where new circumstances or evidence have  
14 brought to light different or likely increased environmental impacts not previously dealt with.

15 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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16 <sup>377</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and  
17 programmatic EISs).

18 <sup>378</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may  
19 not be required, but also puts a boundary on when that period is no longer relevant but setting substantial  
20 commencement as a point where supplemental EISs may no longer be required. A definition for  
21 substantial commencement is proposed in section 11-200-2.

## **§11-200-28 Supplemental EIS<sup>379</sup> Contents**

1 The contents of the supplemental statement EIS shall be the same as required by this chapter  
2 for the EIS and may incorporate by reference unchanged material from the same; however, in  
3 addition, it shall fully document the proposed changes from the original EIS, including changes  
4 in ambient conditions or available information that have a bearing on a proposed action or its  
5 impacts, the positive and negative aspects of these changes, and shall comply with the content  
6 requirements of section 11-200-16 as they relate to the changes.

7 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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8 <sup>379</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and  
9 programmatic EISs).

## **§11-200-29 Supplemental EIS<sup>380</sup> Procedures**

- 1 The requirements of the thirty-day consultation, filing public notice, distribution, the forty-five-day
- 2 public review, comments and response, and acceptance procedures, shall be the same for the
- 3 supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.
  
- 4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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5 <sup>380</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and  
6 programmatic EISs).

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1 Subchapter 11 Severability

## **§11-200-30 Severability**

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

6 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6, 343-8)

### **Note**

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

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