

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Working Draft of Proposed Revisions to Hawai'i  
2 Administrative Rules Title 11 Department of Health  
3 Chapter 200 Environmental Impact Statement Rules  
4 **Version 0.2 September 5, 2017**

5  
6 Prepared with the assistance of the Office of Environmental Quality Control (OEQC).

7  
8 Version 0.2 is a revision of Version 0.1 that incorporates feedback from Environmental Council  
9 (EC) members and the general public.

10  
11 **Background**

12 The current Hawai'i Administrative Rules (HAR) Title 11 Department of Health (DOH) Chapter  
13 200 Environmental Impact Statements ("HAR Chapter 11-200") were promulgated and compiled  
14 in 1996. An amendment to add an exemption class for the acquisition of land for affordable  
15 housing was added in 2007, although it has not been compiled with the rest of the rules.

16  
17 On July 27, 2017, the EC Permitted Interaction Group submitted [Version 0.1](#) to the EC for its  
18 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional  
19 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline  
20 document and to serve as a foundation for consulting with affected agencies and the general  
21 public. The EC approval concluded the work of the Permitted Interaction Group.

22  
23 Version 0.2 is intended to be a discussion document. The EC anticipates preparing a Version  
24 0.3 in October 2017 that could potentially become the proposed draft for which it conducts  
25 formal public hearings to adopt into rules.

26  
27 **How to Read Version 0.2**

28 Versions 0.1 and 0.2 use a "Ramseyer-lite" style of formatting to indicate proposed changes to  
29 HAR Chapter 11-200. Text with an underline is language proposed to be added to the rules.  
30 Text with a strikethrough is language proposed for removal from the rules. A footnote  
31 accompanies the proposed change to provide context.

32  
33 In addition, Version 0.2 introduces yellow highlighting. Yellow highlighting indicates changes  
34 made in Version 0.2. These changes include changes to proposed revisions in Version 0.1 as  
35 well as new changes to the existing rules that were not proposed in Version 0.1. Also, Version  
36 0.2 may have multiple footnotes following a given change. These footnotes are separated by a  
37 forward slash ("/") to help distinguish the different footnotes.

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1 **Major Topics Addressed in Version 0.2**

2 Version 0.2 proposes changes affecting almost every section of HAR Chapter 11-200. In  
3 addition to the numerous revisions to modernize grammar and enhance readability  
4 (“housekeeping”), the following major topics are addressed in Version 0.2:

- 5 ● Clarifying definitions and aligning them with statutory definitions.
- 6 ● Incorporating cultural practices in accordance with Act 50 (2000).
- 7 ● Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e.,  
8 *The Environmental Notice*).
- 9 ● Aligning the “triggers” requiring environmental review for agencies and applicants with  
10 statutory language.
- 11 ● Clarifying the environmental review process as it applies to states of emergency and  
12 emergency actions.
- 13 ● Clarifying roles and responsibilities of proposing agencies and approving agencies in the  
14 environmental review process.
- 15 ● Revising the requirements and procedures for creating exemption lists and exempting  
16 actions from further environmental review.
- 17 ● Modernizing submittals, deadlines, comment and response, and distribution to recognize  
18 electronic communication.
- 19 ● Revising the comment and response requirements and procedures for environmental  
20 assessments (EAs) and environmental impact statements (EISs).
- 21 ● Clarifying style standards for EAs and EISs, including when an action is a program or a  
22 project.
- 23 ● Clarifying significance criteria thresholds for determining whether to issue an exemption  
24 notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- 25 ● Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- 26 ● Revising requirements for conducting scoping meetings following an EISPN.
- 27 ● Clarifying content requirements for Draft and Final EISs.
- 28 ● Revising procedures for appealing non-acceptance to the EC.
- 29 ● Revising procedures for joint federal-state environmental review.
- 30 ● Revising the requirements and procedures for determining when to do a Supplemental  
31 EIS, including aligning the requirements with statute and case law.
- 32 ● Adding a retroactivity section for actions that have already completed environmental  
33 review or are undergoing review at the time the rules would be enacted.

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1 **HAR Chapter 11-200 Environmental Impact**  
2 **Statement Rules**

3 Subchapter 1 Purpose

4 **§11-200-1 Purpose**

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

11  
12 Environmental assessments and environmental impact statements are meaningless without the  
13 conscientious application of the environmental review process as a whole, and shall not be  
14 merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies  
15 and applicants shall ensure that EAs and EISs are prepared at the earliest opportunity in the  
16 planning and decision-making process. This shall assure an early open forum for discussion of  
17 adverse effects and available alternatives, and that the decision-makers will be enlightened to  
18 any environmental consequences of the proposed action prior to decision making<sup>4, 5</sup>

19  
20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-1, 343-6)

21  
22  
23

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<sup>1</sup> Housekeeping.

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

<sup>3</sup> Increases clarity.

<sup>4</sup> Emphasizes that the EIS process is to occur before committing to a particular course of action.

<sup>5</sup> Moved up from section 11-200-14 to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

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1 Subchapter 2 Definitions and Terminology

2 **§11-200-2 Definitions and Terminology**

3 As used in this chapter:

4

5 "Acceptance" means a formal determination of acceptability<sup>6</sup> that the document required to be  
6 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental  
7 impact statement (EIS),<sup>7</sup> ~~adequately describes identifiable environmental impacts, and~~  
8 ~~satisfactorily responds to comments received during the review of the statement as prescribed~~  
9 ~~by section 11-200-23.~~<sup>8</sup> Acceptance does not mean that the action is environmentally sound or  
10 unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
11 determination of acceptance is required prior to implementing or approving the action.  
12

13 "Accepting authority" means the final<sup>9</sup> official who<sup>10</sup> or agency that ~~determines the acceptability~~  
14 ~~of the EIS document~~ makes the determination that a final EIS required to be filed pursuant to  
15 chapter 343, HRS, fulfills the definitions and requirements of an EIS<sup>11</sup>.  
16

17 "Action" means any program or project to be initiated by an agency or applicant.  
18

19 "Addendum" means an attachment to a draft ~~environmental assessment~~ EA<sup>12</sup> or draft  
20 ~~environmental impact statement~~ EIS<sup>13</sup>, prepared at the discretion of the proposing agency, ~~of~~  
21 applicant, or<sup>14</sup> approving agency, and distinct from a supplemental EIS ~~statement~~<sup>15</sup>, for the  
22 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,  
23 or clarifications to information already contained in the draft ~~environmental assessment~~ EA<sup>16</sup> or  
24 the draft ~~environmental impact statement~~ EIS already filed with the office.  
25

---

<sup>6</sup> Housekeeping. Removes redundant language.

<sup>7</sup> Housekeeping.

<sup>8</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.

<sup>9</sup> Removes "final" because it does not contribute additional meaning to the definition.

<sup>10</sup> Housekeeping.

<sup>11</sup> Clarifies that the role of the accepting authority ~~role is about~~ to determine the acceptability ~~about~~ of a final EIS.

<sup>12</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>13</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>14</sup> Clarifies that the approving agency does not always prepare the EA or EIS.

<sup>15</sup> Removes redundant language. An EIS is by definition a statement.

<sup>16</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

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- 1 "Agency" means any department, office, board, or commission of the state or county  
2 government ~~which~~ that is part of the executive branch of that government.  
3
- 4 "Applicant" means any person ~~who~~ that<sup>17</sup>, pursuant to statute, ordinance, or rule, officially  
5 requests approval from an agency for a proposed action.  
6
- 7 "Approval" means a discretionary consent required from an agency prior to ~~actual~~<sup>18</sup>  
8 implementation of an action. ~~Discretionary consent means a consent, sanction, or~~  
9 ~~recommendation from an agency for which judgment and free will may be exercised by the~~  
10 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~  
11 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~  
12 ~~by law or rule without the use of judgment or discretion.~~<sup>19</sup>  
13
- 14 "Approving agency" means an agency that issues an approval prior to ~~actual~~<sup>20</sup> implementation  
15 of an applicant<sup>21</sup> action, determines the need for an EA or EIS, and issues the exemption,  
16 FONSI, or acceptance determination.<sup>22</sup> The approving agency may be is also the<sup>23</sup> accepting  
17 authority for an applicant final EIS.<sup>24</sup>  
18
- 19 "Concurrence" means the discretionary consent of the council to an agency exemption list.<sup>25</sup>  
20
- 21 "Council" or "EC" means the environmental council.  
22
- 23 "Cumulative impact" means the impact on the environment ~~which~~ that results from the  
24 incremental impact of the action when added to other past, present, and reasonably foreseeable  
25 future actions regardless of what agency or person undertakes such other actions. Cumulative  
26 impacts can result from individually minor but collectively significant actions taking place over a  
27 period of time.  
28  
29

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17 Stylistic change because a "person" as defined by the rules is not always a human.

18 Does not add meaning to sentence so removing the word.

19 Remove Removes "discretionary consent" from the definition and made makes it a standalone definition that mirrors the statute.

20 Does not add meaning to sentence so removing the word.

21 Approving agencies are only in the case of applicants.

22 The approving agency makes the decision about level of review and if the applicant has satisfied HRS Chapter 343.

23 Clarifies that the approving authority is always the accepting authority for applicants.

24 In the case of applicants, the approving agency is also the accepting authority. This adds clarification to the definition.

25 Adds a definition for the council's concurrence of agency exemption lists. Concurrence is discretionary because it is up to the council to be satisfied with the agency exemption list. The discretionary consent is not an approval because it does not apply to a specific ~~project~~ action.

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1 "Discretionary consent" means a consent, sanction, or recommendation from an agency for  
2 which judgment and free will may be exercised by the issuing agency, as distinguished from a  
3 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an  
4 agency upon a given set of facts, as prescribed by law or rule without the use of judgment or  
5 discretion.<sup>26</sup>

6  
7 "Draft environmental assessment" means the ~~environmental assessment~~ EA submitted by a  
8 proposing agency or an approving agency for public review and comment when that agency  
9 anticipates a ~~negative declaration~~ finding of no significant impact (FONSI)<sup>27</sup> determination.

10  
11 "Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological  
12 effects (such as the effects on natural resources and on the components, structures, and  
13 functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic  
14 effects, social effects, or health effects, whether primary, secondary, or cumulative, immediate  
15 or delayed<sup>28</sup>. Effects may also include those effects resulting from actions ~~which that~~ may have  
16 both beneficial and detrimental effects, even if on balance the agency believes that the effect  
17 will be beneficial.

18  
19 "EIS public scoping meeting" means a meeting open to the public held by the proposing agency  
20 or applicant, or their representative, within the thirty-day public consultation period described in  
21 section 11-200-15, ~~inviting that invites~~ the participation of those agencies, citizen groups, and  
22 individuals reasonably believed to be potentially affected by the proposed action (including  
23 those who might not be in accord with the proposed action), to assist the preparing party in  
24 determining the range of actions, alternatives, impacts, and proposed mitigation measures to be  
25 considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.  
26 Suggestions made at the EIS public scoping meeting are considered to be advisory and not  
27 mandatory.<sup>29</sup>

28  
29 "Emergency action" means an action to prevent or mitigate loss or damage to life, health,  
30 property, or essential public services in response to a sudden unexpected occurrence  
31 demanding such immediate action. ~~a project or program that normally would be subject to~~  
32 chapter 343, HRS, but is not because of a state of emergency declared by the governor.<sup>30/31</sup>

---

<sup>26</sup> Definition removed from "approval" and made standalone. Mirrors HRS § section 343-2, HRS,  
language and expands on ministerial definition (which is existing language in HAR § section 11-200-2).

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

<sup>28</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

<sup>29</sup> Removes language unnecessary to the definition of "EIS public scoping meeting" that creates doubts  
about the value of participating in the the EIS scoping meeting process.

<sup>30</sup> Redefines an emergency action to be an action undertaken during a particular emergency proclamation  
issued by the governor.

<sup>31</sup> Re-inserting language that was deleted in v0.1 and moving distinction between actions taken in  
response to an emergency without a governor's proclamation of a state of emergency and actions taken  
during a governor proclaimed state of emergency in section 11-200-5, Agency Actions.



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1 "Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural,  
2 and social conditions that exist within the area affected by a proposed action, including land,  
3 human and animal communities, **health**,<sup>32</sup> air, water, minerals, flora, fauna, ambient noise, and  
4 objects of historic, cultural,<sup>33</sup> or aesthetic significance.

5  
6 "Environmental assessment" or "EA"<sup>34</sup> means a written evaluation ~~to determine whether an~~  
7 ~~action may have a significant environmental effect. that serves to provide sufficient evidence~~  
8 ~~and analysis to determine whether an action may have a significant environmental effect.~~<sup>35</sup> ~~It~~  
9 ~~together Together~~<sup>36</sup> with a FONSI, **an EA**<sup>37</sup> satisfies chapter 343, HRS, when no EIS is  
10 necessary,<sup>38</sup> and facilitates preparation of an EIS when no **EIS is determined to be**<sup>39</sup> necessary  
11 and the **Chapter 343, HRS, may be satisfied without an EA when**, based on an agency's  
12 judgment and experience, the agency concludes that the proposed action may have a  
13 significant effect on the environment **and therefore proceeds directly to or authorizes an**  
14 **applicant to proceed directly to the preparation of an EIS.**<sup>40</sup>

15  
16 "~~Environmental impact~~" means ~~an effect of any kind, whether immediate or delayed, on any~~  
17 ~~component of the environment.~~<sup>41</sup>

18  
19 "Environmental impact statement,"<sup>42</sup> "statement,"<sup>43</sup> or "EIS" means an informational document  
20 prepared in compliance with chapter 343, HRS, ~~and this chapter and which fully complies with~~  
21 ~~subchapter 7 of this chapter~~<sup>42</sup>. The initial statement EIS<sup>43</sup> filed for public review shall be referred  
22 to as the draft ~~environmental impact statement EIS~~ and shall be distinguished from the final  
23 ~~environmental impact statement EIS~~, which is the document that has incorporated the public's  
24 comments and the responses to those comments. The final ~~environmental impact statement~~  
25 EIS is the document that shall be evaluated for acceptability by the ~~respective~~<sup>44</sup> accepting  
26 authority.

27

---

<sup>32</sup> Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".

<sup>33</sup> Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).

<sup>34</sup> Adds common abbreviation for use throughout the rules.

<sup>35</sup> Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.

<sup>36</sup> Stylistic change to increase readability.

<sup>37</sup> Stylistic change to increase readability.

<sup>38</sup> Stylistic change to increase readability.

<sup>39</sup> Clarifies when an EIS is required by inserting verb "determined". Agencies specifically make "determinations" that EISs are either necessary or not necessary (e.g., FONSI).

<sup>40</sup> Clarifies that an EA is not always required prior to beginning preparation of an EIS.

<sup>41</sup> Deletes because the definition is unnecessary. Combining the definitions of "effect" and "environment" provides more clarity than this definition.

<sup>42</sup> Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

<sup>43</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>44</sup> Unnecessary language so recommend removing.

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1 "EIS preparation notice,"<sup>45</sup> or "EISPN"<sup>46</sup>, or "preparation notice" means a determination based  
2 on an environmental assessment that the subject that an<sup>47</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement EIS, based on either an EA or an agency's judgment and experience that the  
5 proposed action may have a significant effect on the environment and therefore authorizes the  
6 preparation of an EIS without first requiring an EA.<sup>48/49/50/51</sup>  
7  
8 "Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to  
9 prepare environmental assessments, for a class of actions, based on a determination by the  
10 proposing agency or approving agency that the class of actions will probably have a minimal or  
11 no significant effect on the environment.<sup>52</sup>  
12  
13 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a  
14 public government<sup>53</sup> action, or the agency with the power of approval, in the case of a private  
15 action, when it has determined that the proposed project is an exempt or emergency project  
16 action<sup>54</sup>.  
17  
18 "Final environmental assessment" means either the ~~environmental assessment~~ EA submitted by  
19 a proposing agency or an approving agency following the public review and comment period for  
20 the draft ~~environmental assessment~~ EA and in support of either a FONSI or a ~~preparation notice~~  
21 an EISPN<sup>55</sup>, determination; or the ~~environmental assessment submitted by a proposing agency~~  
22 ~~or an approving agency subject to a public consultation period when such an agency clearly~~  
23 ~~determines at the outset that the proposed action may have a significant effect and hence will~~  
24 ~~require the preparation of a statement.~~<sup>56</sup>

---

<sup>45</sup> Housekeeping.

<sup>46</sup> Adds common abbreviation for use throughout the rules.

<sup>47</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>48</sup> Adds the direct-to-EIS pathway to the definition of an EISPN.

<sup>49</sup> Removes unnecessary language describing the process of making an EISPN determination while preserving the meaning of the definition.

<sup>50</sup> Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency's judgment and experience chapter 343-5(e), HRS.

<sup>51</sup> Moved under "E" because EISPN is used more frequently than "preparation notice".

<sup>52</sup> Removes the definition because the concept of "classes of actions" is removed in section 11-200-8.

<sup>53</sup> Global change that clarifies that "public" refers to "government" actions. "Public" is used throughout the regulations to refer to the general citizenry.

<sup>54</sup> Aligns with defined term "emergency action".

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

<sup>56</sup> Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency's judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.

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1 "Finding of no significant impact" or "FONSI" means a determination by an agency based on an  
2 EA that an action not otherwise exempt ~~does will~~<sup>57</sup> not have ~~the potential for~~<sup>58</sup> a significant  
3 effect on the environment and therefore does not require the preparation of an EIS. A FONSI is  
4 required prior to implementing or approving the action.<sup>59</sup>

5  
6 "Impacts" means the same as "effects".<sup>60</sup>

7  
8 "Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

9  
10 "National Environmental Policy Act" or "NEPA"<sup>61</sup> means the National Environmental Policy Act  
11 of 1969, Public Law 91-190, 42 U.S.C. § sections 4321-4347, as amended.

12  
13 ~~"Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
14 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
15 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
16 ~~A negative declaration is required prior to implementing or approving the action.~~<sup>62</sup>

17  
18 "Office" means the office of environmental quality control.

19  
20 "Periodic bulletin" means the document required by section 343-3, HRS, and published by the  
21 office.

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

25  
26 "Power generating facility" means:

- 27 1. A new, fossil-fueled, electricity-generating facility, where the electrical output  
28 rating of the new equipment exceeds 5.0 megawatts; or  
29 2. An expansion in generating capacity of an existing, fossil-fueled, electricity-  
30 generating facility, where the incremental electrical output rating of the new  
31 equipment exceeds 5.0 megawatts.<sup>63</sup>

32  
33  
34  
35  

---

<sup>57</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>58</sup> Removes and adds language to align definition with chapter 343, HRS.

<sup>59</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>60</sup> Adds a reference for anyone looking up the word "impacts" to direct them to the word "effects".

<sup>61</sup> Adds common abbreviation for use throughout the rules.

<sup>62</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>63</sup> Adds definition from HRS § 343-2.

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1 "Preparation notice," or "EIS preparation notice,"<sup>64</sup> or "EISPN"<sup>65</sup> means a determination based  
2 on an environmental assessment that the subject ~~that an~~<sup>66</sup> action may have a significant effect  
3 on the environment and, therefore, will require the preparation of an environmental impact  
4 statement ~~EIS, based on either an EA or an agency's judgment and experience that the~~  
5 ~~proposed action may have a significant effect on the environment~~ and therefore authorizes the  
6 ~~preparation of an EIS without first requiring an EA.~~<sup>67</sup>

7  
8 "Primary impact,"<sup>1</sup> or "primary effect,"<sup>1</sup> or "direct impact,"<sup>1</sup> or "direct effect" means effects which  
9 ~~that~~ are caused by the action and occur at the same time and place.

10  
11 ~~A "programmatic EIS" or "PEIS" is an EIS that assesses the environmental impacts of: (1) a~~  
12 ~~number of separate actions in a given geographic area which, if considered singly, may have~~  
13 ~~minor impacts, but if considered together may have significant impacts; (2) a sequence of~~  
14 ~~actions contemplated by a single agency or applicant; (3) separate actions having generic or~~  
15 ~~common impacts; (4) an entire program or plan having wide application or restricting the range~~  
16 ~~of future alternative policies or projects, including new or significant changes to existing land use~~  
17 ~~plans, development plans, zoning regulations, or agency comprehensive resource management~~  
18 ~~plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6)~~  
19 ~~implementation of a single project or program over a large geographic area.~~<sup>68/69</sup>

20  
21 "Proposing agency" means any state or county agency that proposes an action under chapter  
22 343, HRS.<sup>70</sup>

23  
24 "Secondary impact,"<sup>1</sup> or "secondary effect,"<sup>1</sup> or "indirect impact,"<sup>1</sup> or "indirect effect" means ~~an~~  
25 ~~effects effect~~ which ~~that is~~ are caused by the action and are later in time or farther removed in  
26 distance, but ~~are is~~ still reasonably foreseeable.<sup>71</sup> ~~Indirect An indirect effects effect~~ may include  
27 ~~a growth-inducing effects effect~~<sup>72</sup> and other effects related to induced changes in the pattern of

---

<sup>64</sup> Housekeeping.

<sup>65</sup> Adds common abbreviation for use throughout the rules.

<sup>66</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>67</sup> ~~Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".~~

<sup>68</sup> ~~Adds a definition to go along with new sections on how to do environmental review for an action this that is a "program". Most environmental review focuses on projects. By providing language on for a programmatic look environmental review, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the tension trade-off between earliest practicable time with project specificity.~~

<sup>69</sup> ~~This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatic EIS", but rather provides more specificity in the on requirements for EAs and EISs as to the differing level of detail needed for projects and programs.~~

<sup>70</sup> Added definition because the term is used frequently throughout the rules.

<sup>71</sup> ~~Grammar change to singular to mirror the definition of effect or impact as a singular object.~~

<sup>72</sup> ~~Stylistic change reflect changes made to previous sentence.~~

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1 land use, population density or growth rate, and related effects on air, and water,<sup>73</sup> and other  
2 natural systems, including ecosystems.  
3  
4 "Significant effect" or "significant impact" means the sum of effects on the quality of the  
5 environment, including actions that irrevocably commit a natural resource, curtail the range of  
6 beneficial uses of the environment, are contrary to the state's State's<sup>74</sup> environmental policies or  
7 long-term environmental goals and guidelines as established by law, ~~or~~<sup>75</sup> adversely affect the  
8 economic welfare,<sup>76</sup> ~~or~~ social welfare, or<sup>77</sup> cultural practices of the community and State,<sup>78</sup> or  
9 are otherwise set forth in section 11-200-12 ~~of this chapter~~<sup>79</sup>.  
10  
11 "Substantial commencement" means that a an applicant<sup>80</sup> project or program action<sup>81</sup> has  
12 reached the stage where its last approval<sup>82</sup> has been granted and has advanced to the point  
13 where financial commitments are in place and scheduled and design is essentially complete, or,  
14 for government programs an agency action<sup>83</sup> for which an approval is not required, the project  
15 or program program or project<sup>84</sup> has advanced to the point where financial commitments are in  
16 place and scheduled and design is essentially complete.<sup>85</sup>  
17  
18  
19  
20

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<sup>73</sup> Housekeeping.

<sup>74</sup> Housekeeping.

<sup>75</sup> Housekeeping.

<sup>76</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>77</sup> Mirrors structure of amended language for Act 50 (2000) related to the definition of Environmental Impact Statement that similarly inserted language regarding "cultural practice."

<sup>78</sup> Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added "cultural practices" to the list of adverse effects that could constitute "significance". "Of the community and State" is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of "significant effect".

<sup>79</sup> Housekeeping.

<sup>80</sup> Clarifies the distinction between applicant actions and government actions.

<sup>81</sup> Increases readability.

<sup>82</sup> As defined in section 343-2, HRS, an approval is a discretionary consent.

<sup>83</sup> Removes introduction of new term "government", and replaces with synonym "agency". Further clarifies that this definition applies to both programs and projects.

<sup>84</sup> Global edit changing word order of "project or program" to "program or project" to align with the definition of "action" in section 343-2, HRS.

<sup>85</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law. In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than \$20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).

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1 "Supplemental statement EIS" means an additional environmental impact statement updated  
2 EIS<sup>86</sup> prepared for an action for which a ~~statement~~ an EIS was previously accepted, but which  
3 has yet to progress to substantial commencement and since acceptance the action,  
4 circumstances, or anticipated impacts have<sup>87</sup> changed substantively in size, scope, intensity,  
5 use, location, or timing, among other things.  
6  
7 "Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.<sup>88</sup>  
8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-6)  
10  
11

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<sup>86</sup> Housekeeping.

<sup>87</sup> Incorporates substantial commencement into the definition and emphasizes that changes can apply to the proposed action, the environment, or knowledge (ties to supplemental sections).

<sup>88</sup> Adds definition from HRS § section 343-2, HRS.

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Environmental Council

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

1 Subchapter 3 Periodic Bulletin

2 **§11-200-3 Periodic Bulletin**

3 (a) The office shall inform the public through the publication of a periodic bulletin of the  
4 following:

- 5 (1) Notices filed by agencies<sup>89</sup> of the availability of ~~environmental assessments~~ EAs  
6 and appropriate addendum documents for review and comments;  
7 (2) Notices filed by agencies of determinations that ~~statements~~ EISs are required or  
8 not required;  
9 (3) The availability of ~~statements~~ EISs, supplemental ~~statements~~ EISs and  
10 appropriate addendum documents for review and comments;  
11 (4) The acceptance or non-acceptance of ~~statements~~ EISs; and  
12 (5) Other notices required by the rules of the council.

13  
14 ~~(b) The bulletin shall be made available to any person upon request. Copies of the bulletin  
15 shall also be sent to the state library system and other depositories or clearinghouses.<sup>90</sup>~~

16  
17 (c <sup>b</sup><sup>91</sup>) The bulletin shall be issued on the eighth and twenty-third days of each month. All  
18 agencies and applicants submitting exemption notices<sup>92</sup>, draft ~~environmental~~  
19 ~~assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNS<sup>93</sup>,  
20 ~~environmental impact statements~~ EISs, acceptance or non-acceptance determinations,  
21 addenda, supplemental ~~statements~~ EISs, supplemental ~~preparation notices~~ EISPNS,  
22 revised documents, withdrawals, and other notices required to be published in the  
23 bulletin shall submit such documents or notices to the office before the close of business  
24 ~~eight~~ four<sup>94</sup> ~~working~~ business<sup>95</sup> days prior to the issue date. In case the deadline falls on  
25 a state holiday or ~~nonworking~~ non-business<sup>96</sup> day, the deadline shall be the next ~~working~~  
26 business<sup>97</sup> day.

27  
28  
29  

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<sup>89</sup> Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

<sup>90</sup> This rule is no longer required as the periodic bulletin is available to everyone electronically and no paper copies are produced by the office.

<sup>91</sup> Housekeeping. Renumbers paragraphs.

<sup>92</sup> Aligns with section 11-200-8.

<sup>93</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>94</sup> OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

<sup>95</sup> Housekeeping. For computing time see section 1-29, HRS.

<sup>96</sup> Housekeeping.

<sup>97</sup> Housekeeping.

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Environmental Council

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

- 1 (d c) All submittals to the office for publication in the bulletin shall be accompanied by a  
2 completed informational form ~~which~~ that provides whatever information the office needs  
3 to properly notify the public. The information requested may include the following: the  
4 title of the action; the islands affected by the proposed action; tax map key numbers;  
5 street addresses; nearest geographical landmarks; latitudinal and longitudinal  
6 coordinates or other geographic data<sup>98</sup>; applicable permits, including discretionary  
7 approvals requiring preparation of the document under chapter 343, HRS;<sup>99</sup> whether the  
8 proposed action is an agency or an applicant action; a citation of the applicable federal  
9 or state statutes requiring preparation of the document; the type of document prepared;  
10 the names, addresses and contact persons as applicable of the accepting authority, the  
11 proposing agency, the approving agency, the applicant, and the consultant; and a brief  
12 narrative summary of the proposed action ~~which~~ that provides sufficient detail to convey  
13 the full impact of the proposed action to the public.  
14
- 15 (e d) The office may provide recommendations to the agency **or applicant**<sup>100</sup> responsible for  
16 the ~~environmental assessment~~ EA or EIS regarding any applicable administrative  
17 content requirements set forth in this chapter.  
18
- 19 (f e) The office may, on a space available basis, publish other notices not specifically related  
20 to chapter 343, HRS.  
21

22 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5, 343-6) (Imp: HRS §341-3,  
23 343-3, 343-6)  
24  
25  
26

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<sup>98</sup> Clarifies that OEQC may ask for geographic data such as that included in a standard GIS shapefile file. The existing rules already allows for this but this language is to make it clearer.

<sup>99</sup> Clarifies that the agency is required to identify the specific discretionary approval that requires an applicant to go through environmental review.

<sup>100</sup> **Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.**



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Environmental Council

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

1 Subchapter 4 Responsibilities

2 **§11-200-4 Identification of Approving Agency and<sup>101</sup>**  
3 **Accepting Authority**

4 (a) Whenever an agency proposes an action, the ~~final~~<sup>102</sup> authority to accept ~~a statement an~~  
5 EIS shall rest with:

- 6 (1) The governor, or ~~an~~ the governor's<sup>103</sup> authorized representative, whenever an  
7 action proposes the use of state lands or ~~the use of~~<sup>104</sup> state funds or,<sup>105</sup>  
8 whenever a state agency proposes an action ~~within~~ under<sup>106</sup> section 11-200-6(b);  
9 or  
10 (2) The mayor, or ~~an~~ the mayor's<sup>107</sup> authorized representative, of the respective  
11 county whenever an action proposes only the use of county lands or county  
12 funds.

13 In the event that an action involves state and county lands, **state and county**<sup>108</sup> funds, or  
14 both **state and county**<sup>109</sup> lands and funds, the governor or the governor's authorized  
15 representative shall have authority to accept the EIS.<sup>110</sup>

17 (b) Whenever an applicant proposes an action, the authority for requiring an EA or<sup>111</sup>  
18 statements EIS, and for making a determination regarding any required EA, and<sup>112</sup>  
19 accepting any required statements EIS that have been prepared shall rest with the  
20 approving<sup>113</sup> agency ~~initially receiving and agreeing that initially received and agreed~~<sup>114</sup>  
21 to process the request for an approval. With respect to EISs, the approving agency is  
22 also called the accepting authority.<sup>115</sup>

<sup>101</sup> Expand the content of this section to also identify the agency with responsibility in cases of EAs.

<sup>102</sup> Removes the word "final" because it does not add to the meaning of the sentence **anymore**.

<sup>103</sup> Housekeeping.

<sup>104</sup> Housekeeping.

<sup>105</sup> Housekeeping.

<sup>106</sup> Housekeeping.

<sup>107</sup> Housekeeping.

<sup>108</sup> **Makes clear that "state and county" funds are meant.**

<sup>109</sup> **Makes clear that "state and county" lands and funds are meant.**

<sup>110</sup> Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23.

<sup>111</sup> Adds EAs to the identification of which agency has responsibility. Note that this change also means that the OEQC is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the OEQC is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

<sup>112</sup> Adds EAs to the identification of which agency has responsibility. Language is phrased **d** so that the agency can make a FONSI or EISPN determination.

<sup>113</sup> Housekeeping. Clarifies **that** the **agency** is called the **approving agency**.

<sup>114</sup> Housekeeping.

<sup>115</sup> Clarifies that **the** approving agency is the accepting authority for applicants.

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1  
2 (c)<sup>116</sup> \_\_In the event that ~~there is~~<sup>117</sup> more than one agency ~~that is proposing the action or~~  
3 ~~in the case of applicants,~~<sup>118</sup> more than one agency<sup>119</sup> has jurisdiction over the action,  
4 and these agencies are unable to agree as to which agency has the responsibility for  
5 complying with ~~section 343-5(e)~~ chapter 343<sup>120</sup>, HRS, the office, after consultation with  
6 the agencies involved, shall determine which agency is responsible for compliance<sup>121</sup>. In  
7 making the determination, the office shall ~~take into consideration, including, but not~~  
8 ~~limited to, the following factors~~ consider<sup>122</sup>:  
9 (1) The agency with the greatest responsibility for supervising or approving the  
10 action as a whole;  
11 (2) The agency that can most adequately fulfill the requirements of chapter 343,  
12 HRS, and this chapter;  
13 (3) The agency that has special expertise or greatest<sup>123</sup> access to information  
14 relevant to the action's implementation and impacts<sup>124</sup>; and  
15 (4) The extent of participation of each agency in the action.

16  
17 (d) The office shall not serve as the accepting authority for any proposed agency or  
18 applicant action.<sup>125</sup>  
19

20 [Eff 12/6/85; am and Comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
21  
22

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<sup>116</sup> Creates new paragraph to clarify that OEQC can make this determination for applicants and for agencies when they are unable to agree on who is the proposing agency or approving agency. The paragraph applies in cases where multiple agencies refuse to be the responsible agency; not only when multiple agencies want the responsibility.

<sup>117</sup> Stylistic change to increase readability.

<sup>118</sup> Clarifies OEQC's authority for determining who has responsibility for chapter 343, HRS compliance.

<sup>119</sup> Stylistic change to increase readability.

<sup>120</sup> Housekeeping. Section paragraphs change over time, so language adjusted to just refer to the statute.

<sup>121</sup> Stylistic change to increase readability.

<sup>122</sup> Housekeeping.

<sup>123</sup> Helps to distinguish among agencies - all agencies have access to information.

<sup>124</sup> Clarifies what kind of information is meant.

<sup>125</sup> Clarifies that OEQC may not serve as the accepting authority, as per chapter 343, HRS.

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Environmental Council

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

1 Subchapter 5 Applicability

2 **§11-200-5 Agency Actions**

- 3 (a) For all **proposed**<sup>126</sup> agency<sup>127</sup> actions ~~which that~~ are not exempt,<sup>128</sup> as defined in section  
4 11-200-8, the proposing<sup>129</sup> agency shall assess at the earliest practicable time the  
5 significance of potential impacts of ~~its actions the~~ **proposed agency's**<sup>130</sup> action<sup>131</sup>,  
6 including the overall, cumulative impact in light of related past, present, and reasonably  
7 foreseeable<sup>132</sup> actions in the region area affected<sup>133</sup> ~~and further actions contemplated.~~<sup>134</sup>  
8  
9 (b) The applicability of chapter 343, HRS, to specific agency **proposed** actions is  
10 conditioned by the agency's proposed use of state or county lands or funds. ~~Therefore,~~  
11 ~~when an agency proposes to implement an action to use state or county lands or funds,~~  
12 ~~it shall be subject to the provisions of chapter 343, HRS, and this chapter.~~<sup>135</sup>  
13  
14 (c) Use of state or county funds shall include any form of funding assistance flowing from  
15 the State or **a**<sup>136</sup> county, and use of state or county lands includes any use (title, lease,  
16 permit, easement, licenses, etc.) or entitlement to those lands.  
17  
18 (d) For agency actions, chapter 343, HRS, exempts from applicability any feasibility or  
19 planning study for possible future programs or projects ~~which that~~ the agency has not  
20 approved, adopted, or funded. Nevertheless, if an agency is studying the feasibility of a  
21 proposal, it shall consider environmental factors and available alternatives and disclose  
22 these in any future assessment EA or subsequent statement EIS. ~~If, however,~~<sup>137</sup> the  
23 planning and feasibility studies involve testing or other actions ~~which that~~ may have a  
24 significant impact on the environment, ~~then~~<sup>138</sup> an environmental assessment EA or  
25 EIS<sup>139</sup> shall be prepared.

---

<sup>126</sup> **Global change removing "proposed" before or modifying "action" unless "proposed" is necessary within the context of the sentence or provision to provide clarity.**

<sup>127</sup> Housekeeping.

<sup>128</sup> Housekeeping.

<sup>129</sup> Housekeeping.

<sup>130</sup> **Housekeeping. Removed words to eliminate redundancy.**

<sup>131</sup> Housekeeping.

<sup>132</sup> Clarifies what is considered as part of a cumulative **look impact analysis**. Language is drawn from NEPA, 40 CFR 1508.7.

<sup>133</sup> Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

<sup>134</sup> Removes "further actions contemplated" because it is captured in the language of "reasonably foreseeable."

<sup>135</sup> Housekeeping. Redundant language.

<sup>136</sup> **Housekeeping.**

<sup>137</sup> Housekeeping.

<sup>138</sup> Housekeeping.

<sup>139</sup> Acknowledges direct-to-EIS pathway.

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1  
2 (e) Any amendment to existing county general plans, however denominated, which may  
3 include ~~but not be limited to~~ development plans,<sup>140</sup> or community plans, where the  
4 amendment would result in designations other than agriculture, conservation, or  
5 preservation,<sup>141</sup> requires an environmental assessment EA or EIS<sup>142</sup>. (Actions by a  
6 county initiating a comprehensive review toward effectuating either a general plan or  
7 amendment thereof may be excepted. General plan amendments requested by a private  
8 owner or developer outside of the comprehensive review process are not excepted.)  
9

10 (f) In the event that the governor declares a state of emergency pursuant to chapter  
11 127A, HRS,<sup>143</sup> the governor has authority to suspend laws, including chapter 343, HRS.  
12 In such an event, the proposing agency shall file an exemption notice in its records that  
13 the emergency action was undertaken pursuant to a specific emergency proclamation.<sup>144</sup>  
14 If the emergency action has not substantially commenced within sixty days of the  
15 emergency proclamation, the action will be subject to chapter 343, HRS.<sup>145</sup>  
16

17 (g) In the event of a sudden unexpected emergency causing or likely to cause loss  
18 or damage to life, health, property, or essential public service, but for which a declaration  
19 of a state of emergency pursuant to chapter 127A, HRS has not been made, an agency  
20 may undertake an emergency action without conducting environmental review under  
21 chapter 343. An emergency action undertaken without environmental review may still be  
22 subject to the public's right to a judicial proceeding on the lack of an assessment,  
23 pursuant to chapter 343, HRS, and shall be initiated within one hundred and twenty days  
24 of the agency's decision to carry out the action or from the date the public becomes  
25 aware of the action, whichever is later.<sup>146</sup>  
26

27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(b),  
28 343-6)

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<sup>140</sup> Housekeeping.

<sup>141</sup> Housekeeping.

<sup>142</sup> Direct-to-EIS is also an option.

<sup>143</sup> States the name of the statute for emergency proclamations.

<sup>144</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>145</sup> Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count.

<sup>146</sup> Provides an avenue for agencies to undertake emergency actions (e.g., cutting a firebreak) absent a governor declared state of emergency and provides safeguards to avoid abuse, including clearly defined circumstances in which the emergency action may be initiated and the requirement to produce an exemption notice after the fact. An agency decision to undertake an emergency action without environmental review may be subject to judicial review.

1 **§11-200-6 Applicant Actions**

- 2 (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency  
3 approval prior to proceeding with:  
4 (1) Implementing actions ~~which that~~ are either located in certain specified areas or  
5 contain certain specified ~~elements~~ components<sup>147/148</sup>; or  
6 (2) Actions that require certain types of amendments to existing county general  
7 plans.

8 The ~~approving~~<sup>149</sup> agency that initially received and agreed to process the request for  
9 approval shall require the applicant to prepare an EA of the proposed action at the  
10 earliest practicable time to determine whether an EIS is likely to be required; provided  
11 that if the approving agency determines, through its judgment and experience, that an  
12 EIS is likely to be required, the approving agency may authorize the applicant to choose  
13 not to prepare an EA and instead prepare an EIS that begins with the preparation of an  
14 EISPN.<sup>150</sup>

- 15  
16 (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the  
17 agency ~~processing~~<sup>151</sup> an applicant's request for approval to prepare an environmental  
18 assessment the applicant to prepare an EA<sup>152</sup>. There are ~~seven~~ six<sup>153</sup> geographical  
19 categories, ~~five~~ six<sup>154</sup> proposal elements component categories<sup>155/156</sup>; and two  
20 administrative categories.

- 21 (1) The ~~seven~~ six<sup>157</sup> geographical categories are:  
22 (A) The use of state or county lands;  
23 (B) Any use within any land classified as conservation district by the state  
24 land use commission under chapter 205, HRS;  
25 (C) Any use within the shoreline area as defined in section 205A-41, HRS;  
26 (D) Any use within any historic site as designated in the national register or  
27 Hawaii Register of Historic Places<sup>158</sup>;

<sup>147</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).

<sup>148</sup> Replaces the suggested term “element” with the term “component” to clarify that the activities need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.

<sup>149</sup> Housekeeping. (Missing underlining in v0.1.)

<sup>150</sup> Adopts language from Act 172 (2012) for direct-to-EIS and that the applicant has the responsibility to prepare the document.

<sup>151</sup> Housekeeping. (Missing strikethrough in v0.1.)

<sup>152</sup> Housekeeping.

<sup>153</sup> Reflects reorganization of “helicopter facility” to a component category.

<sup>154</sup> Reflects reorganization of “helicopter facility” to a component category.

<sup>155</sup> Acknowledges the “project” type triggers (e.g., waste-to-energy facility).

<sup>156</sup> Aligns language with “categories” used in previous sentence and uses the term “component” to clarify that the activities in this category need not be essential to the proposed action, but merely part of the proposed action in order to trigger the preparation of an EA.

<sup>157</sup> Reflects reorganization of “helicopter facility” to a component category.

<sup>158</sup> Adds specificity.

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- 1 (E) Any use within the Waikiki area of Oahu, the boundaries of which are  
2 delineated in the land use ordinance as amended, establishing the  
3 "Waikiki Special District";
- 4 (F) Any reclassification of any land classified as conservation district by the  
5 state land use commission under chapter 205, HRS; and
- 6 ~~(G) The construction of a new, or the expansion or modification of an existing~~  
7 ~~helicopter facilities facility<sup>159</sup> within the State which that by way of their~~  
8 ~~its<sup>160</sup> activities may affect;<sup>161</sup> any land classified as conservation district~~  
9 ~~by the state land use commission under chapter 205, HRS; the shoreline~~  
10 ~~area as defined in section 205A-41, HRS; or,<sup>162</sup> any historic site as~~  
11 ~~designated in the National Register or Hawaii Register as provided for in~~  
12 ~~the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E,~~  
13 ~~HRS of Historic Places<sup>163</sup>; or, until the statewide historic places inventory~~  
14 ~~is completed, any historic site found by a field reconnaissance of the area~~  
15 ~~affected by the helicopter facility and which that is under consideration for~~  
16 ~~placement on the National Register or the Hawaii Register of Historic~~  
17 ~~Places.<sup>164</sup>~~
- 18 (2) The five six<sup>165</sup> proposal elements component categories are:
- 19 (A) Wastewater treatment unit, except an individual wastewater system or  
20 wastewater treatment unit serving fewer than fifty single-family dwellings  
21 or the equivalent;
- 22 (B) Waste-to-energy facility;
- 23 (C) Landfill;
- 24 (D) Oil refinery; or
- 25 (E) Power-generating facility.
- 26 (F) The construction of a new, or the expansion or modification of an existing  
27 helicopter facilities facility<sup>166</sup> within the State that by way of their its<sup>167</sup>  
28 activities may affect;<sup>168</sup> any land classified as conservation district by the  
29 state land use commission under chapter 205, HRS; the shoreline area  
30 as defined in section 205A-41, HRS; or,<sup>169</sup> any historic site as designated

159 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

160 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

161 Housekeeping.

162 Housekeeping.

163 Housekeeping. Unnecessary specificity.

164 Deletes and moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

165 Reflects reorganization of "helicopter facility" to a component category.

166 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

167 Clarifies that the trigger can apply to a facility; trigger does not require multiple facilities.

168 Housekeeping.

169 Housekeeping.

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1 in the National Register or Hawaii Register as provided for in the Historic  
2 Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS of  
3 Historic Places<sup>170</sup>; or, until the statewide historic places inventory is  
4 completed, any historic site found by a field reconnaissance of the area  
5 affected by the helicopter facility and which that is under consideration for  
6 placement on the National Register or the Hawaii Register of Historic  
7 Places.<sup>171</sup>

8 (23) The two administrative categories are:

- 9 (A) Any amendment to existing county general plans, however denominated,  
10 which may include, but are not be limited to, development plans,<sup>172</sup> or  
11 community plans, where the amendment would result in designations  
12 other than agriculture, conservation, or preservation. (Actions by a county  
13 initiating a comprehensive review toward effectuating either a general  
14 plan or amendment thereof may be excepted. General plan amendments  
15 requested by a private owner or developer outside of the comprehensive  
16 review process are not excepted.); and  
17 (B) The use of state or county funds, other than funds to be used for  
18 feasibility or planning studies for possible future programs or projects  
19 which that the agency has not approved, adopted, or funded, or funds to  
20 be used for the acquisition of unimproved real property; provided that the  
21 agency shall consider environmental factors and available alternatives in  
22 its feasibility or planning studies.

23  
24 [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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<sup>170</sup> Housekeeping. Unnecessary specificity.

<sup>171</sup> Moves "helicopter facility" content into subsection (2), "component categories" because the activity of constructing, expanding or modifying a helicopter facility is the first consideration in determining whether an EA is required, and the geographic location of the facility is the second consideration in determining whether an EA is required.

<sup>172</sup> Housekeeping.

1 **§11-200-7 Multiple or Phased Applicant or Agency**  
2 **Actions**

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

- 5 (1) The component actions are phases or increments of a larger total undertaking  
6 and lack independent utility<sup>173</sup>;
- 7 (2) An individual project action is a necessary precedent for to<sup>174</sup> a larger project  
8 action<sup>175</sup>;
- 9 (3) An individual project action<sup>176</sup> represents a commitment to a larger project  
10 action<sup>177</sup>; or
- 11 (4) The actions in question are essentially identical and a single statement EIS will  
12 adequately address the impacts of each individual action and those of the group  
13 of actions as a whole.

14  
15 [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
16

---

<sup>173</sup> Incorporates the threshold for determining improper segmentation.

<sup>174</sup> Stylistic change.

<sup>175</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>176</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>177</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.



1 **§11-200-8 Exempt Classes of Action Exemption**  
2 **Notices**<sup>178</sup>

- 3 (a) ~~Chapter 343, HRS, states that procedures whereby specific Specific<sup>179</sup> types of actions,~~  
4 ~~because they will probably have minimal or no significant effects, individually and~~  
5 ~~cumulatively, on the environment,<sup>180</sup> can be declared exempt from the preparation of an~~  
6 ~~EA.<sup>181</sup> a list of classes of actions shall be drawn up which, because they will probably~~  
7 ~~have minimal or no significant effect on the environment, may be declared exempt by the~~  
8 ~~proposing agency or approving agency from the preparation of an environmental~~  
9 ~~assessment provided that agencies declaring an action exempt under this section shall~~  
10 ~~obtain the advice of other outside agencies or individuals having jurisdiction<sup>182</sup> or~~  
11 ~~expertise as to the propriety of the exemption. Government Agency<sup>183</sup> activities that do~~  
12 ~~not rise to the level of being a project or program program or project, or are ordinary~~  
13 ~~functions that by their nature do not have the potential to adversely affect the~~  
14 ~~environment more than negligibly, which may include, among other activities, routine~~  
15 ~~repair, maintenance, purchase of supplies, and administrative actions involving~~  
16 ~~personnel only, shall not be considered projects or programs programs or projects for~~  
17 ~~the purposes of Chapter 343, HRS.<sup>184</sup> Actions declared exempt from the preparation of~~  
18 ~~an environmental assessment EA under this section are not exempt from complying with~~  
19 ~~any other applicable statute or rule. The following types of projects or programs are~~  
20 ~~eligible for exemption<sup>185</sup> list represents exempt classes of action:~~
- 21 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment,  
22 or topographical features, involving negligible minor<sup>186</sup> or no expansion or  
23 change of use beyond that previously existing;
  - 24 (2) Replacement or reconstruction of existing structures and facilities where the new  
25 structure will be located generally on the same site and will have substantially the  
26 same purpose, capacity, density, height, and dimensions as the structure  
27 replaced;
  - 28 (3) Construction and location of single, new, small facilities or structures and the  
29 alteration and modification of the same and installation of new, small, equipment

<sup>178</sup> Renames to shift focus from the “classes” (a term no longer used) to the notice.

<sup>179</sup> Removes unnecessary language.

<sup>180</sup> Removes unnecessary language. “Significant effects” as defined are “on the environment”.

<sup>181</sup> Incorporates language ~~direction directly~~ from chapter 343, HRS.

<sup>182</sup> Housekeeping.

<sup>183</sup> Clarifies that agencies are the government actors contemplated in this section, as opposed to other branches of the government or the federal government.

<sup>184</sup> Establishes a *de minimis* level of government activity for being considered eligible for environmental review. Chapter 343, HRS, does not define a project or program, so leaves it to agencies and the courts to decide whether a particular activity constitutes such.

<sup>185</sup> Replaces “classes” language with “types”.

<sup>186</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

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- 1 and facilities and the alteration and modification of same, including, but not  
2 limited to:
- 3 (A) Single-family residences less than 3,500 square feet, as measured by the  
4 controlling law under which the proposed action is being considered,<sup>187</sup>  
5 if<sup>188</sup> not in conjunction with the building of two or more such units;
- 6 (B) Multi-unit structures designed for not more than four dwelling units if not  
7 in conjunction with the building of two or more such structures;
- 8 (C) Stores, offices, and restaurants designed for total occupant load of twenty  
9 persons or less per structure, if not in conjunction with the building of two  
10 or more such structures; and
- 11 (D) Water, sewage, electrical, gas, telephone, and other essential public  
12 utility services extensions to serve such structures or facilities; accessory  
13 or appurtenant structures including garages, carports, patios, swimming  
14 pools, and fences; and, acquisition of utility easements;
- 15 (4) Minor alterations in the conditions of land, water, or vegetation;
- 16 (5) Basic data collection, research, experimental management, and resource and  
17 infrastructure testing and<sup>189</sup> evaluation activities ~~which that~~ do not result in a  
18 serious or major disturbance to an environmental resource;
- 19 (6) Construction or placement of minor structures accessory to existing facilities;
- 20 (7) Interior alterations involving things such as partitions, plumbing, and electrical  
21 conveyances;
- 22 (8) Demolition of structures, except those structures located on any historic site as  
23 designated in the national register or Hawaii Register of Historic Places<sup>190</sup>, or that  
24 are under consideration for placement on the national register or the Hawaii  
25 Register of Historic Places<sup>191</sup> as provided for in the National Historic Preservation  
26 Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E,  
27 HRS<sup>192</sup>;
- 28 (9) Zoning variances except shoreline set-back variances; ~~and~~<sup>193</sup>
- 29 ~~(10) Continuing administrative activities including, but not limited to purchase of~~  
30 ~~supplies and personnel-related actions.~~<sup>194</sup>
- 31 (44 10<sup>195</sup>) Acquisition of land and existing structures, including single or multi-unit  
32 dwelling units, for the provision of affordable housing, involving no material

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<sup>187</sup> Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

<sup>188</sup> Stylistic; mirrors provision below (B).

<sup>189</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

<sup>190</sup> Adds specificity.

<sup>191</sup> Aligns language with section 343-5(a)(8)(C), HRS.

<sup>192</sup> Unnecessary language.

<sup>193</sup> Housekeeping.

<sup>194</sup> Deletes language because it is addressed at the beginning of paragraph (a).

<sup>195</sup> Housekeeping. Renumbering this and subsequent paragraphs.

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

- 1 change of use beyond ~~that~~ previously existing ~~uses,~~<sup>196</sup> and for which the  
2 legislature has appropriated or otherwise authorized funding<sup>197</sup>; ~~and~~<sup>198</sup>  
3 (11) ~~New construction of affordable housing that only has use of state or county lands~~  
4 ~~or funds as the sole~~<sup>199</sup> requirement for ~~compliance with~~<sup>200</sup> ~~chapter 343, HRS, and~~  
5 ~~as proposed~~<sup>201</sup> is consistent with existing state urban land classification, existing  
6 county residential or mixed use zoning classification, and applicable federal,  
7 state, and county development standards.<sup>202</sup>  
8  
9 (b) All exemptions under the ~~classes~~ ~~types~~<sup>203</sup> in this section are inapplicable when the  
10 cumulative impact of planned successive actions in the same place, over time, is  
11 significant, or when an action that is normally insignificant in its impact on the  
12 environment may be significant in a particularly sensitive environment.  
13  
14 (c) Any agency, at any time, may request that a new exemption ~~class~~ ~~type~~<sup>204</sup> be added, or  
15 that an existing one be amended or deleted. The request shall be submitted to the  
16 council, in writing, and contain detailed information to support the request as set forth in  
17 section 11-201-16, ~~HAR,~~ environmental council rules.  
18  
19 ~~(d) — Each agency, through time and experience, shall develop its own list of specific~~  
20 ~~types of actions which fall within the exempt classes types above~~<sup>205</sup>, as long as these  
21 ~~lists are consistent with both the letter and intent expressed in these exempt classes~~  
22 ~~here~~<sup>206</sup> ~~and chapter 343, HRS. These lists and any amendments to the lists shall be~~  
23 ~~submitted to the council for review and concurrence. The lists shall be reviewed~~  
24 ~~periodically by the council.~~  
25  
26 ~~(e)~~<sup>207</sup> ~~Actions that are clearly covered by an agency exemption list that has received~~  
27 ~~council concurrence and do not have any potential to produce significant impacts do not~~

<sup>196</sup> Clarifies what “that” refers to.

<sup>197</sup> In 2007, the Council formally amended HAR Section 11-200-8 to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates ~~and compiles~~ the 2007 change.

<sup>198</sup> Housekeeping.

<sup>199</sup> Clarifies that the only trigger for compliance with chapter 343, HRS, is the use of state or county lands, ~~not that the action only uses state or county funds or lands.~~

<sup>200</sup> Stylistic change.

<sup>201</sup> Removes ambiguity as to whether the project “as implemented” must be consistent.

<sup>202</sup> Adds affordable housing as an exemption type, with ~~caveats~~ the following caveats: 1) that the only trigger is use ~~of~~ state or county lands or funds (other triggers would mean the exemption is not applicable) and that 2) the proposed action is consistent with existing land use controls so that it does not require going before the LUC or Planning Commissions to get a change in SLUD or zoning.

<sup>203</sup> Housekeeping.

<sup>204</sup> Housekeeping.

<sup>205</sup> Housekeeping.

<sup>206</sup> Housekeeping.

<sup>207</sup> Inserts new paragraphs; subsequent paragraphs are renumbered.

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Environmental Council

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1 ~~require documentation.~~<sup>208</sup> ~~Actions with no documentation may still be subject to the~~  
2 ~~public's right to a judicial proceeding on the lack of an assessment, pursuant to chapter~~  
3 ~~343, HRS.~~<sup>209</sup>

4  
5 ~~(f) For an action that an agency considered exempt according to the criteria in~~  
6 ~~paragraph (a) but is not clearly covered by the agency's exemption list, or is on the~~  
7 ~~agency's exemption list but that list has not received council concurrence within the past~~  
8 ~~five years, the agency shall undertake a systematic analysis to determine whether the~~  
9 ~~action merits exemption consistent with one or several of the types listed in paragraph~~  
10 ~~(a).~~<sup>210</sup> ~~For such actions, the agency shall obtain the advice of outside agencies or~~  
11 ~~individuals having jurisdiction or expertise as to the propriety of the exemption. An action~~  
12 ~~may not be segmented per section 11-200-7 so as to appear to be consistent with~~  
13 ~~several types listed in paragraph (a).~~<sup>211</sup>

14  
15 ~~(e g) Each agency shall maintain records of such~~<sup>212</sup> ~~actions, called exemption~~  
16 ~~notices,~~<sup>213</sup> ~~which it has found to be exempt from the requirements for preparation of an~~  
17 ~~environmental assessment EA in chapter 343, HRS, and each agency shall produce the~~  
18 ~~records for review upon request. The agency shall provide a means to notify and accept~~  
19 ~~input from the public in a timely manner after the exemption declaration is made. An~~  
20 ~~agency may request the office to publish the exemption notice in the periodic bulletin.~~  
21 ~~The public's right to judicial proceeding on the lack of an assessment under chapter 343,~~  
22 ~~HRS shall commence from the date the public is notified of the exemption through the~~  
23 ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~<sup>214</sup>  
24

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<sup>208</sup> Removes documentation obligation for agencies for activities that are just above the threshold of *de minimis* but may not require the level of consultation and documentation associated with typical projects or programs.

<sup>209</sup> Affirms the public's right to challenge borderline cases that may not be discovered until "the bulldozers are out" and the agency may have erred in its decision to not prepare an EA.

<sup>210</sup> Requires agencies to do consultation for exemptions that are borderline cases or for lists that have not received council concurrence within the past five years. The five years concurrence threshold is an incentive for agencies to regularly refresh their exemption lists with the council, but allows for consultation so that agencies can continue to use the list but with a higher burden of due diligence.

<sup>211</sup> Reminds agencies that an action may not be broken up into smaller pieces to fit within several exemption types.

<sup>212</sup> Housekeeping.

<sup>213</sup> Connects to the exemption notice definition and emphasizes that an agency has duty to maintain these as a record.

<sup>214</sup> Requires agencies to make exemption notices publicly available either through the periodic bulletin or through their own means. Some agencies already do this by posting them to their website in a spreadsheet or in meeting minutes. This helps to close the gap between when an agency makes a determination and how the public is supposed to know, so that everyone has a clear date for when legal challenge begins and ends, without making the disclosure process overly burdensome to agencies or OEQC.

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1 ~~(f h) — In the event the governor declares a state of emergency pursuant to chapter~~  
2 ~~127A, HRS,<sup>215</sup> the governor may exempt any affected program or action from complying~~  
3 ~~with this chapter. has authority to suspend laws, including chapter 343, HRS. In such an~~  
4 ~~event, no exemption declaration is required and the proposing agency or approving~~  
5 ~~agency shall file an exemption notice in its records that the emergency action was~~  
6 ~~undertaken pursuant to a specific emergency proclamation.<sup>216</sup>~~

7  
8 ~~(i) — An emergency action that is not initiated within the period of the governor's~~  
9 ~~emergency proclamation shall no longer be considered an emergency action and~~  
10 ~~therefore shall be subject to chapter 343, HRS.<sup>217/218</sup>~~

11  
12 ~~(d) Each agency, through time and experience, shall develop its own list consistent~~  
13 ~~with both the letter and intent expressed here and in chapter 343, HRS of specific~~  
14 ~~programs or projects that the agency considers to be included within the exempt types~~  
15 ~~above. These lists and any amendments to the lists shall be submitted to the council for~~  
16 ~~review and concurrence. The lists shall be reviewed periodically by the council.<sup>219</sup>~~

17  
18 ~~(e) Each agency shall create exemption notices for actions that it has found to be~~  
19 ~~exempt from the requirements for preparation of an EA. Each agency shall produce the~~  
20 ~~exemption notices for review upon request by the public or an agency.<sup>220</sup>~~

21  
22 ~~(f) Agencies shall consult on the propriety of an exemption and publish exemption~~  
23 ~~notices with the office. Consultation and publication of an exemption notice is not~~  
24 ~~required when:~~

25 ~~(1) The council has concurred with the agency's exemption list no more than seven~~  
26 ~~years before the agency initiates the action or authorizes an applicant to initiate~~  
27 ~~the action;~~

28 ~~(2) The action is consistent with the letter and intent of the agency's exemption list;~~  
29 ~~and~~

30 ~~(3) The action does not have any potential to produce significant impacts.<sup>221</sup>~~

---

<sup>215</sup> States the name of the statute for emergency proclamations.

<sup>216</sup> Removes unnecessary language because the governor can exempt any program by statute. Adds that the agency has a responsibility to record that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>217</sup> Narrows the risk of an emergency proclamation being a free-for-all by removing actions that did not start during the emergency proclamation from being covered by the emergency proclamation.

<sup>218</sup> Deletes subsections (d) - (i) and reorganizes content to increase readability.

<sup>219</sup> Requires an agency to create an exemption list and submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>220</sup> Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200-5.

<sup>221</sup> Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Provides an exception to the consultation and

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1 (g) Actions with no published exemption notice may still be subject to the public's  
2 right to a judicial proceeding on the lack of an assessment, pursuant to chapter 343,  
3 HRS, and shall be initiated within one hundred and twenty days of the agency's decision  
4 to carry out the action or from the date the public becomes aware of the exemption  
5 notice, whichever is later.<sup>222</sup>  
6

7 (h) For consultation on the propriety of an exemption, an agency shall undertake an  
8 analysis to determine whether the action merits exemption consistent with one or several  
9 of the types listed in paragraph (a). The agency shall obtain the advice of other outside  
10 agencies or individuals having jurisdiction or expertise as to the propriety of the  
11 exemption. This analysis and consultation shall be documented in the exemption  
12 notice.<sup>223</sup>  
13

14 (i) To publish an exemption notice, the agency shall submit the exemption notice to  
15 the office per section 11-200-3 for publication in the next periodic bulletin. The public's  
16 right to a judicial proceeding on the lack of an assessment under chapter 343, HRS,  
17 shall commence from the date of publication in the notice.<sup>224</sup>  
18

19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)  
20  
21  
22

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publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

<sup>222</sup> Clarifies that actions with no published exemption notice may still be subject to judicial review and the time period for initiating judicial review.

<sup>223</sup> Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

<sup>224</sup> Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices. This subsection also sets a time period for the public's right to judicial review under chapter 343, HRS for the lack of assessment of an exempted action with a published exemption notice.

1 Subchapter 6 Determination of Significance

2 **§11-200-9 Assessment of Agency Actions and**  
3 **Applicant Actions**

- 4 (a) For agency actions, except those actions exempt from the preparation of an  
5 environmental assessment EA pursuant to section 343-5, HRS, or section 11-200-8, the  
6 proposing agency shall:
- 7 (1) Seek, at the earliest practicable time, the advice and input of the county agency  
8 responsible for implementing the county's general plan for each county in which  
9 the proposed action is to occur, and consult with other agencies having  
10 jurisdiction or expertise as well as those citizen groups and individuals ~~which~~ that  
11 the proposing agency reasonably believes ~~to~~ may<sup>225</sup> be affected;
- 12 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~  
13 the<sup>226</sup> statutory conditions under section 343-5(a), HRS, that<sup>227</sup> require the  
14 preparation of an environmental assessment EA;
- 15 (3) Prepare an environmental assessment EA pursuant to section 11-200-10 ~~of this~~  
16 ~~chapter which shall also identify~~ that identifies<sup>228</sup> potential impacts, ~~evaluate~~  
17 evaluates<sup>229</sup> the potential significance of each impact, and ~~provide~~ provides<sup>230</sup> for  
18 detailed study of significant impacts;
- 19 (4) Determine, after reviewing the environmental assessment EA described in  
20 paragraph (3), and considering the significance criteria in section 11-200-12,  
21 whether the proposed action warrants an anticipated ~~negative declaration~~ FONSI  
22 or an ~~environmental impact statement preparation notice~~ EISPN, provided that  
23 for an ~~environmental impact statement preparation notice~~ EISPN, the proposing  
24 agency shall inform the accepting authority of the proposed action;
- 25 (5) File the appropriate notice of determination (anticipated ~~negative declaration~~  
26 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
27 accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the  
28 completed informational form referenced<sup>231</sup> in section 11-200-3(d)<sup>232</sup>, and ~~four~~  
29 ~~copies of~~<sup>233</sup> the supporting environmental assessment EA (a draft environmental  
30 assessment EA for the anticipated ~~negative declaration~~ FONSI or a final  
31 environmental assessment EA for the environmental impact statement

---

<sup>225</sup> Housekeeping.

<sup>226</sup> Housekeeping.

<sup>227</sup> Housekeeping.

<sup>228</sup> Housekeeping.

<sup>229</sup> Housekeeping.

<sup>230</sup> Housekeeping.

<sup>231</sup> Housekeeping.

<sup>232</sup> Housekeeping.

<sup>233</sup> OEQC only needs one copy, not four.

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- 1           ~~preparation notice~~ EISPN, when applicable<sup>234</sup>) with the office in accordance with  
2 sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of  
3 this chapter;
- 4           (6) ~~Distribute~~ Circulate<sup>235</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>236</sup> be affected;
- 8           (7) Deposit, concurrently with the filing in paragraph (5), one paper<sup>237</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>238</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<sup>239</sup> 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>240</sup> ~~preparation notice~~  
26 EISPNS determinations<sup>241</sup>, the proposing agency shall proceed to section 11-  
27 200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-  
28 200-13, and 11-200-14, as appropriate.  
29

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<sup>234</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>235</sup> The term “distribution” is the section heading of § section 11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>236</sup> Housekeeping.

<sup>237</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>238</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>239</sup> Removes redundant term “definition” as a FONSI is by definition a determination.

<sup>240</sup> Housekeeping.

<sup>241</sup> An EISPN is by definition a determination.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (b) For applicant actions, except those actions ~~exempt~~ **excluded**<sup>242</sup> from the preparation of  
2 an ~~environmental assessment~~ EA pursuant to section 343-5, HRS, or those actions  
3 ~~which that~~ the approving agency declares exempt pursuant to section 11-200-8, the  
4 approving agency shall:
- 5 (1) Require the applicant, at the earliest practicable time, to seek the advice and  
6 input of the lead county agency responsible for implementing the county's  
7 general plan for each county in which the proposed action is to occur, and  
8 consult with other agencies having jurisdiction or expertise as well as those  
9 citizen groups and individuals ~~which that~~ the approving agency reasonably  
10 believes to be affected;
- 11 ~~(2) Require the applicant to provide whatever information the approving agency~~  
12 ~~deems necessary to~~<sup>243</sup> ~~complete the preparation of an environmental~~  
13 ~~assessment prepare an EA in accordance with section 11-200-10;~~<sup>244</sup>
- 14 ~~(3)~~ **2**<sup>245</sup> Within thirty days from the date of receipt of the applicant's ~~complete~~ **completed**  
15 request for approval to the approving agency:
- 16 (A) ~~prepare an environmental assessment pursuant to section 11-200-10;~~  
17 ~~and~~
- 18 (B) ~~determine, after reviewing the environmental assessment and considering~~  
19 ~~the significance criteria in section 11-200-12 whether the proposed action~~  
20 ~~warrants an anticipated negative declaration or an environmental impact~~  
21 ~~statement preparation notice;~~  
22 ~~require the applicant~~<sup>246</sup> ~~to prepare a draft EA pursuant to section 11-200-10;~~<sup>247</sup>
- 23 ~~(4)~~ **3**<sup>248/249</sup> Determine, after reviewing the draft EA and considering the significance  
24 criteria in section 11-200-12, whether the proposed action warrants an  
25 anticipated FONSI or an EISPN;<sup>250</sup>
- 26 ~~(5)~~ **4**<sup>251</sup> File the appropriate notice of determination (anticipated ~~negative declaration~~  
27 FONSI or ~~environmental impact statement preparation notice~~ EISPN in  
28 accordance with section 11-200-11.1 or 11-200-11.2), the completed

<sup>242</sup> Clarifies that there is a distinction between exclusion by statute and exemption under section 11-200-8.

<sup>243</sup> Narrows the language to focus on the EA on the content requirements.

<sup>244</sup> This language is unnecessary because agencies no longer prepare EAs on behalf of applicants. The remaining language is redundant with the provisions that follow in this section and therefore the entire paragraph is being deleted.

<sup>245</sup> Housekeeping (renumbering).

<sup>246</sup> Shifts the focus of preparation to the applicant per Act 172 (2012).

<sup>247</sup> Removes the thirty-day requirement for an approving agency to prepare, review, and issue an anticipated FONSI or EISPN. Instead, makes the agency tell the applicant within ~~30~~ **thirty** days of receipt of a request for approval which course of environmental review the applicant is to take.

<sup>248</sup> Inserts a new paragraph for the agency to decide whether an anticipated FONSI or EISPN is appropriate. Subsequent paragraphs are renumbered.

<sup>249</sup> Housekeeping (renumbering).

<sup>250</sup> Makes this step explicit; it was not stated before but it the step that occurs between the draft EA stage and filing an anticipated FONSI.

<sup>251</sup> Housekeeping (renumbering).

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Environmental Council

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

1 informational form referenced<sup>252</sup> in section 11-200-3(d)<sup>253</sup> and ~~four copies of the~~  
2 supporting environmental assessment EA (a draft environmental assessment EA  
3 for the anticipated ~~negative declaration~~ FONSI or a final environmental  
4 assessment EA for the ~~environmental impact statement preparation notice~~  
5 EISPN, when applicable<sup>254</sup>) with the office in accordance with sections 11-200-3,  
6 and 11-200-11.1, or 11-200-11.2, ~~and other applicable sections of this chapter~~<sup>255</sup>;  
7 ~~(6 5)~~<sup>256</sup> Distribute ~~Circulate~~<sup>257</sup>, or require the applicant to ~~distribute~~ circulate<sup>258</sup>,  
8 concurrently with the filing in paragraph (4), the draft ~~environmental assessment~~  
9 EA to other agencies having jurisdiction or expertise as well as citizen groups  
10 and individuals ~~which~~ that the approving agency reasonably believes to be  
11 affected;  
12 ~~(7 6)~~<sup>259</sup> Deposit or require the applicant to deposit, concurrently with the filing in  
13 paragraph (4), one paper<sup>260</sup> copy of the draft ~~environmental assessment~~ EA at  
14 the nearest state library in each county in which the proposed action is to occur  
15 ~~and one paper copy at the Hawaii Documents Center~~<sup>261</sup>;  
16 ~~(8 7)~~<sup>262</sup> Receive public comments, transmit copies of public comments to the applicant  
17 and require Require the applicant to receive and respond to public comments, all  
18 in accordance with section 11-200-9.1 for draft ~~environmental assessment~~ EA, or  
19 11-200-15 for ~~preparation notices~~ EISPNs and their associated final  
20 environmental assessment EA. For draft ~~environmental assessment~~ EA, the  
21 approving agency shall require the applicant:  
22 (A)<sup>263</sup> ~~to provide~~ revise the draft EA with<sup>264</sup> ~~whatever~~ information the approving  
23 agency deems necessary in accordance with section 11-200-10<sup>265</sup> to

<sup>252</sup> Housekeeping.

<sup>253</sup> Housekeeping.

<sup>254</sup> Acknowledges that a final EA is not required if an agency or applicant is proceeding directly to preparation of an EIS.

<sup>255</sup> Adds language to ensure that other sections are fulfilled as well.

<sup>256</sup> Housekeeping (renumbering).

<sup>257</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>258</sup> Replaces the term “distribution” because that term is the section heading of §11-200-21, thus giving the term a particular role in HAR chapter 11-200, so the verb “circulate” is proposed instead.

<sup>259</sup> Housekeeping (renumbering).

<sup>260</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access are able to review the document.

<sup>261</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>262</sup> Housekeeping (renumbering).

<sup>263</sup> Breaks up the paragraph so that the three requirements for the applicant are easier to read.

<sup>264</sup> Housekeeping.

<sup>265</sup> Emphasizes that the final EA content should still meet the EA content requirements as set for forth in section 10.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1                    ~~revise the draft environmental assessment to<sup>266</sup> inform its determination~~  
2                    ~~for a FONSI or EISPN, taking into account comments on the draft EA<sup>267</sup>;~~  
3                    (B)    to incorporate comments as appropriate; and,  
4                    (C)    to include copies of comment letters and the applicant's<sup>268</sup> responses,  
5                    ~~(the The<sup>269</sup> revised draft environmental assessment EA, as revised, shall be filed~~  
6                    ~~as a final environmental assessment EA as described in section 11-200-11.2)<sup>270</sup>;~~  
7                    and  
8                    (9 8)<sup>271</sup> As appropriate, issue a ~~negative declaration FONSI determination<sup>272</sup>~~ or an  
9                    ~~environmental impact statement preparation notice EISPN~~ with appropriate  
10                    notice of determination thereof pursuant to section 11-200-11.2 ~~within thirty~~  
11                    ~~days<sup>273</sup> from the end of the thirty-day public comment period of receiving~~  
12                    ~~information required for delivery to the approving agency pursuant to paragraph 8~~  
13                    ~~7<sup>274</sup>/<sup>275</sup>. For preparation notice EISPN determinations, the approving agency shall~~  
14                    ~~proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-~~  
15                    ~~10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.~~  
16  
17 (c)    For agency or applicant actions, the proposing agency or ~~the applicant~~ approving  
18                    agency, as appropriate, shall analyze ~~or cause to be analyzed in the EA~~ a reasonable  
19                    range of<sup>276</sup> alternatives, in addition to the proposed action ~~in the environmental~~  
20                    ~~assessment EA.~~<sup>277</sup>  
21  
22 (d)    ~~For agency or applicant actions, if the agency determines, through its judgment and~~  
23                    ~~experience, that an EIS is likely to be required, the agency may choose not to prepare~~  
24                    ~~an EA, or authorize the applicant to choose not to prepare an EA, as applicable, and~~

<sup>266</sup> Housekeeping. Removes redundant language.

<sup>267</sup> Emphasizes that the point of revisions to the final EA is to move toward a decision on a FONSI or EISPN based on the content and draft EA comments.

<sup>268</sup> Housekeeping.

<sup>269</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>270</sup> Changes the sentence from a parenthetical statement to a standalone sentence.

<sup>271</sup> Housekeeping (renumbering).

<sup>272</sup> Removes redundant language. A FONSI is defined as a determination in section 11-200-2.

<sup>273</sup> Removes inadvertent strikethrough.

<sup>274</sup> Paragraphs renumbered.

<sup>275</sup> Changes the deadline from 30 days after the close of the public comment period to 30 days after receipt of the final EA.

<sup>276</sup> Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.

<sup>277</sup> Removes unnecessary language to increase clarity that both an analysis of the action and an analysis of alternatives to the action must be included in the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1            instead shall prepare or shall cause to be prepared<sup>278</sup> an EIS that begins with an  
2            EISPN.<sup>279</sup>  
3  
4 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
5  
6  
7

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<sup>278</sup> Clarifies that an agency may cause the EIS to be prepared rather than preparing it on its own.

<sup>279</sup> Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.

1 **§11-200-9.1 Public Review & Response Requirements**  
2 **for Draft Environmental Assessments for Anticipated**  
3 **~~Negative Declaration~~ Finding of No Significant Impact<sup>280</sup>**  
4 **Determinations & Addenda to Draft Environmental**  
5 **Assessments**

6 (a) This section shall apply only if a proposing agency or an ~~approving agency~~ applicant<sup>281</sup>  
7 anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that  
8 agency ~~or applicant~~<sup>282</sup> has completed the draft EA requirements of section 11-200-9(a),  
9 paragraphs (1), (2), (3), (4), (5), (6) and (7) ~~for agencies~~<sup>283</sup>, or section 11-200-9(b),  
10 paragraphs (1), (2), (3), (4), (5) and (6) ~~for applicants~~<sup>284</sup>, as appropriate.

11  
12 (b) ~~The period for public review and for submitting written comments for both agency actions~~  
13 ~~and applicant actions shall begin as of the initial issue date that notice of availability of~~  
14 ~~the draft environmental~~<sup>285</sup> ~~assessment EA was published in the periodic bulletin and~~  
15 ~~shall continue for a period of thirty days.~~ Unless mandated otherwise by statute<sup>286</sup>, for  
16 agency actions and applicant actions, the period for public review and for submitting  
17 written comments shall commence from the date of notice of availability of the draft EA is  
18 initially issued in the periodic bulletin and shall continue for a period of thirty calendar  
19 days.<sup>287</sup> Written comments sent<sup>288</sup> to the proposing agency or approving agency  
20 applicant<sup>289</sup>, whichever is applicable, with a copy of the comments to the applicant, if  
21 applicable,<sup>290</sup> ~~or proposing agency,~~<sup>291</sup> shall be received by<sup>292</sup> or postmarked to the  
22 proposing agency or approving agency applicant<sup>293</sup>, within the thirty-day period. Any

280 Housekeeping.

281 Reflects change that the applicant, rather than the approving agency, prepares the EA.

282 Reflects change that the applicant, rather than the approving agency, prepares the EA.

283 These paragraphs refer to requirements for agencies preparing an EA through distributing and filing the Draft EA.

284 These paragraphs refer to requirements for applicants preparing an EA through distributing and filing the Draft EA.

285 Housekeeping. (v0.1 omitted strikethrough)

286 Acknowledges that the public review period may be altered for certain actions by statute.

287 Measures time consistently in the process. Adds clarity ~~to~~ regarding how to count days (distinguishes from working days) and that the publication date is counted as day zero.

288 Stylistic change.

289 Reflects change that the applicant, rather than the approving agency, prepares the EA. Global change.

290 Clarifies that applicants are not always involved and when not involved, not a copy of the comments need to be sent to the applicant.

291 Redundant; the proposing agency is already as identified as receiving comments.

292 Stylistic change.

293 Reflects change that the applicant, rather than the approving agency, prepares the EA.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 comments outside of the thirty-day period need not be ~~considered or~~<sup>294</sup> responded to nor  
2 ~~considered in the final EA. However, for a proposed site for a new correctional facility or~~  
3 ~~for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS,~~  
4 ~~the period for public review and submitting written comments thirty-day period shall be a~~  
5 ~~sixty-day period days.~~<sup>295/296</sup>  
6  
7 (c) For agency actions, the proposing agency shall<sup>297</sup> respond in writing to all comments  
8 received or postmarked during the ~~thirty-day~~ ~~statutorily mandated~~<sup>298</sup> review period,  
9 incorporate comments ~~into the final EA~~<sup>299</sup> as appropriate,<sup>300</sup> and append the comments  
10 and responses ~~in to~~<sup>301</sup> the final environmental assessment EA. ~~Each response shall be~~  
11 ~~sent directly to the person commenting, with copies of the response also sent to the~~  
12 ~~office. If a number of comments are identical or very similar, the proposing agency may~~  
13 ~~group the comments and prepare a single standard response for each group. When~~  
14 ~~grouping comments, the agency must include each name of the commentor along with~~  
15 ~~the grouped response. One representative copy of comments that are identical or very~~  
16 ~~similar may be included in the final EA rather than reproducing each individual comment.~~  
17 ~~All individual comments and representative copies of identical or very similar comments~~  
18 ~~the~~<sup>302</sup> ~~must be attached~~ ~~appended~~ to the final EA regardless of whether the agency  
19 believes the comments merit individual discussion in the body of the final EA.<sup>303</sup>  
20  
21

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<sup>294</sup> Stylistic change.

<sup>295</sup> Incorporates the public comment period and time limit from HRS § 353-16.35.

<sup>296</sup> Removes the language specific to correctional facilities. There are several instances in the HRS that require adjustments to the environmental review process. OEQC guidance will alert the public to these differences in process.

<sup>297</sup> Acknowledges that some statutes may modify the public review and comment period.

<sup>298</sup> Acknowledges that other statutes may require comment periods of varying lengths.

<sup>299</sup> Clarifies that the comments are included in the final EA.

<sup>300</sup> Housekeeping.

<sup>301</sup> Housekeeping.

<sup>302</sup> Provides that comments that are very similar or identical do not need to be individually responded or included in the final EA. The agency may respond to the issues raised in the comments as a group so long as the individuals who raised the issues are acknowledged. The aim of this provision is to reduce the burden on agencies to reproduce very similar or identical comments received en mass and to focus responses on the issues raised by comments rather than on responding to individual commentors.

<sup>303</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in the identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

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Environmental Council

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

- 1 (d) For applicant actions, the applicant shall respond in writing to all comments received or  
2 postmarked during the thirty-day review period and ~~the approving agency shall~~<sup>304</sup>  
3 incorporate ~~or~~ comments into the final EA as appropriate, and<sup>305</sup> append the comments  
4 and responses ~~in to~~<sup>306</sup> the final ~~environmental assessment EA~~. If a number of comments  
5 are identical or very similar, the applicant may group the comments ~~a and~~<sup>307</sup> prepare a  
6 single standard response for each group. ~~When grouping comments, the applicant must~~  
7 include each name of the commentor along with the grouped response.<sup>308</sup> The  
8 comments must be attached to the final EA regardless of whether the approving agency  
9 believes the comments merit individual discussion in the body of the final EA.<sup>309</sup> ~~Each~~  
10 ~~response shall be sent directly to the person commenting with a copy to the office.~~<sup>310</sup> A  
11 ~~copy of each response shall be sent to the approving agency for its timely preparation of~~  
12 ~~a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or~~  
13 ~~11-200-11.2.~~<sup>311</sup>  
14  
15 (e) An addendum document to a draft ~~environmental assessment EA~~ shall reference the  
16 original draft ~~environmental~~<sup>312</sup> ~~assessment EA~~ it attaches to and shall comply with all  
17 applicable public review and comment requirements set forth in sections 11-200-3 and  
18 11-200-9.

20 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp: HRS §343-3, 343-5, 343-  
21 6)

22  
23

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<sup>304</sup> The applicant prepares the document, and so therefore has the responsibility to incorporate the comments and responses into the document.

<sup>305</sup> Clarifies that the comments are incorporated into the final EA.

<sup>306</sup> Housekeeping.

<sup>307</sup> Housekeeping.

<sup>308</sup> Ensures that each individual who submits a comment, even when it is in the form of a pre-printed postcard or letter that may be grouped with other identical or very similar comments, can verify that the individual's comment was received and responded to.

<sup>309</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in ~~the~~ identical or similar comments.

<sup>310</sup> Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>311</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

<sup>312</sup> Housekeeping. (v0.1 omitted strikethrough)

## 1 **Proposed §11-200-XX Environmental Assessment Style**

2 (a) In developing the draft and final EA, proposing agencies and applicants shall make  
3 every effort to convey the required information succinctly in a form easily understood,  
4 both by members of the public and by government decision-makers, giving attention to  
5 the substance of the information conveyed rather than to the particular form, or length, of  
6 the EA. The scope of the EA may vary with the scope of the proposed action and its  
7 impact. Data and analyses in an EA shall be commensurate with the importance of the  
8 impact, and less important material may be summarized, consolidated, or simply  
9 referenced. An EA shall indicate at appropriate points in the text any underlying studies,  
10 reports, and other information obtained and considered in preparing the EA, including  
11 cost benefit analyses and reports required under other legal authorities.  
12

13 (b) The level of detail in an EA may be more broad for actions for which site-specific impacts  
14 are not discernible due to the nature of the action, including but not limited to actions  
15 constituted of: (1) a number of separate projects in a given geographic area which, if  
16 considered singly, may have minor impacts, but if considered together may have  
17 significant impacts; (2) a sequence of projects contemplated by a single agency or  
18 applicant; (3) separate projects having generic or common impacts; (4) an entire plan  
19 having wide application or restricting the range of future alternative policies or projects,  
20 including new significant changes to existing land use plans, development plans, zoning  
21 regulations, or agency comprehensive resource management plans; (5) implementation  
22 of a single project or multiple projects over a long timeframe; or (6) implementation of a  
23 single program or project over a large geographic area. An EA for these types of actions  
24 may be broader and more general than an EA for discrete and site-specific actions and,  
25 where necessary, omit evaluating issues that are not yet ready for decision at the  
26 planning level. Analysis may be based on conceptual information in some cases and  
27 may discuss in general terms the constraints and sequences of events likely to result in  
28 any narrowing of future options. It may present and analyze in general terms  
29 hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of  
30 individual actions making up the larger action contemplated by the EA and that are  
31 proposed to be carried out in conformance with the conditions and mitigation measures  
32 presented in the EA may require no or limited further review.<sup>313</sup>  
33

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<sup>313</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph, along with the proposed amendments to 11-200-19, Environmental Impact Style and proposed amendments to section 11-200-13, replaces the proposed Programmatic EIS sections in v0.1 and the contemplated Programmatic EA section as discussed at the council meeting August 22, 2017.



**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (c) In preparing any EA, care shall be taken to concentrate on important issues and to  
2 ensure that the EA remains an essentially self-contained document, capable of being  
3 understood by the reader without the need for undue cross-reference.<sup>314</sup>  
4

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

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<sup>314</sup> Mirrors subsection (c) in section 11-200-19, Environmental Impact Style.

1 **§11-200-10 Contents of an Environmental Assessment**

2 The proposing agency or ~~approving agency~~ applicant<sup>315</sup> shall prepare ~~any a~~<sup>316</sup> draft or final  
3 environmental assessment EA of each ~~proposed for any~~<sup>317</sup> action ~~not exempt under section 11-~~  
4 ~~200-8~~<sup>318</sup> and determine whether the anticipated effects constitute a significant effect in the  
5 context of chapter 343, HRS, and section 11-200-12. The environmental assessment EA shall  
6 contain, but not be limited to, the following information:

- 7 (1) Identification of applicant or proposing agency;
- 8 (2) Identification of approving agency, if applicable;
- 9 (3) Identification of agencies, citizen groups, and individuals consulted in ~~making~~  
10 ~~preparing~~<sup>319</sup> the assessment;
- 11 (4) General description of the action's technical, economic, social, cultural<sup>320</sup> and  
12 environmental characteristics;
- 13 (5) Summary description of the affected environment, including suitable and  
14 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
15 Floodway Boundary Maps, or United States Geological Survey topographic  
16 maps;
- 17 (6) Identification and ~~summary analysis~~<sup>321</sup> of impacts and alternatives considered;
- 18 (7) Proposed mitigation measures;
- 19 (8) Agency determination ~~or, for final EAs, or draft environmental assessments EAs~~  
20 ~~only, an anticipated determination~~ for draft EAs<sup>322</sup>;
- 21 (9) Findings and reasons supporting the agency determination or anticipated  
22 determination;
- 23 (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be  
24 prepared;
- 25 (11) List of all required<sup>323</sup> permits and approvals (State, federal, county) ~~required and~~  
26 identification of which are considered to be discretionary<sup>324</sup>; and

---

<sup>315</sup> Removes "approving agency" and replaces with "applicant" because an applicant, rather than an agency, is the one who will prepare the EA.

<sup>316</sup> Housekeeping.

<sup>317</sup> Stylistic change.

<sup>318</sup> Clarifies that only actions that are not otherwise exempt under section 11-200-8 require an EA.

<sup>319</sup> ~~Uses more accurate time consistent with language in the rules. Uses more accurate language~~  
("preparing" rather than "making") that is consistent with language in the rules.

<sup>320</sup> Aligns provision with content requirement of a draft EIS under section 11-200-17(e).

<sup>321</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a detailed discussion detailed enough sufficient to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

<sup>322</sup> Stylistic change to improve clarity.

<sup>323</sup> Housekeeping. Moves the word required from the end of the clause to before the word "permits".

<sup>324</sup> Adds identification of approvals that are considered discretionary. This helps to inform why an applicant is undergoing chapter 343, HRS review, and when a proposed action has reached "substantial commencement" for the purposes of a supplemental EIS.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 (12) Written comments and responses to the comments ~~under~~ received pursuant  
2 to<sup>325</sup>the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1),  
3 or 11-200-15, and statutorily prescribed public review periods.  
4

5 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5(c),  
6 343-6)  
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14 **§11-200-11 REPEALED.**

15 [R AUG 31 1996]  
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<sup>325</sup> Housekeeping.

1 **§11-200-11.1 Notice of Determination for Draft**  
2 **Environmental Assessments**

- 3 (a) After:<sup>326</sup>  
4 (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>327</sup> ~~an environmental assessment~~  
5 ~~a draft EA, and~~<sup>328</sup>  
6 (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>329</sup>  
7 (3) ~~applying~~ Applying the significance criteria in section 11-200-12,  
8 if the proposing agency or the approving agency anticipates that the proposed action is  
9 not likely to have a significant effect, ~~it the proposing agency or approving agency~~<sup>330</sup>  
10 shall issue a notice of ~~determination~~<sup>331</sup> ~~which that shall be~~<sup>332</sup> an anticipated negative  
11 ~~declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.  
12  
13 (b)<sup>333</sup> The proposing agency or approving agency shall ~~also file such the~~<sup>334</sup> notice and  
14 supporting draft EA<sup>335</sup> with the office as early as possible after the determination is made  
15 pursuant to and in accordance with section 11-200-9,<sup>336</sup> and the requirements in  
16 subsection (e)<sup>337</sup> ~~along with four copies of the supporting environmental assessment~~<sup>338</sup>.  
17 ~~In addition to the above, the anticipated negative declaration determination for any~~  
18 ~~applicant action shall be mailed to the requesting applicant by the approving agency. For~~  
19 applicant actions, the approving agency shall also send the anticipated FONSI to the  
20 applicant.<sup>339</sup>  
21  
22 (c) The office shall publish notice of availability of the draft ~~environmental assessment~~ EA  
23 for the anticipated ~~negative declaration~~ FONSI in the periodic bulletin following the date  
24 of receipt by the office in accordance with section 11-200-3.

<sup>326</sup> Housekeeping. Breaks out three conditions into ~~3~~ three items and capitalizes each of the numbered items to make the language clearer.

<sup>327</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>328</sup> Housekeeping. Specifies draft EA.

<sup>329</sup> Housekeeping.

<sup>330</sup> Housekeeping.

<sup>331</sup> Removes redundant language. An anticipated FONSI is defined as a "determination".

<sup>332</sup> Removes redundant language.

<sup>333</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>334</sup> Housekeeping.

<sup>335</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>336</sup> Housekeeping.

<sup>337</sup> Housekeeping.

<sup>338</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>339</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

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Environmental Council

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

- 1 (ed) The notice of an anticipated FONSI determination shall **indicate include** in a concise  
2 manner:
- 3 (1) Identification of the<sup>340</sup> **applicant or** proposing agency **or applicant**<sup>341</sup>;
- 4 (2) Identification of the approving agency or<sup>342</sup> accepting authority;
- 5 (3) ~~Brief~~ **A brief**<sup>343</sup> description of the<sup>344</sup> **proposed** action;
- 6 (4) ~~Determination~~ **The determination** anticipated FONSI<sup>345</sup>;
- 7 (5) Reasons supporting the<sup>346</sup> **anticipated FONSI determination**; and
- 8 (6) ~~Name~~ **The name**<sup>347</sup>, ~~title, contact information, including the email address,~~  
9 **physical**<sup>348</sup> address, and phone number of **a contact person an individual**  
10 **representative of the proposing agency or applicant who may be contacted** for  
11 further information.<sup>349</sup>
- 12
- 13 (de) When an agency withdraws a document, determination, or both<sup>350</sup> pursuant to ~~its the~~  
14 agency's<sup>351</sup> rules, the agency shall submit to the office a written letter informing the office  
15 of ~~its the~~<sup>352</sup> withdrawal **and the rationale for the withdrawal**<sup>353</sup>. The office shall publish  
16 notice of agency withdrawals in accordance with section 11-200-3.
- 17
- 18 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)
- 19

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<sup>340</sup> Housekeeping.

<sup>341</sup> **Parallels similar sentences in the regulations that reference the "proposing agency" first and the "applicant" second.**

<sup>342</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>343</sup> Housekeeping.

<sup>344</sup> Housekeeping.

<sup>345</sup> Housekeeping.

<sup>346</sup> Housekeeping.

<sup>347</sup> Housekeeping.

<sup>348</sup> **includes Modernizes the requirements to include** email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>349</sup> **Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.**

<sup>350</sup> Clarifies that an agency may withdraw a document (i.e., FEA) **as well as being able to and may** withdraw a determination (i.e., EISPN or FONSI).

<sup>351</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.

<sup>352</sup> **Housekeeping.**

<sup>353</sup> **Clarifies that agencies should support the withdrawal notice to the office with a rationale.**

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

- (a) After:<sup>354</sup>
- (1) ~~preparing~~ Preparing, or causing to be prepared,<sup>355</sup> a final environmental assessment EA,
- (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~<sup>356</sup>
- (3) ~~applying~~ Applying the significance criteria in section 11-200-12,
- the proposing agency or the approving agency shall issue ~~one of the following notices a~~  
notice<sup>357</sup> of ~~determination for~~<sup>358</sup> an EISPN or FONSI<sup>359</sup> in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office ~~addressing the requirements in~~  
~~subsection (c), along with four copies of the supporting final environmental~~  
~~assessment,~~<sup>360</sup> provided that in addition to the above, all notices of determination for  
~~any applicant action shall be mailed to the requesting applicant by the approving~~  
~~agency.~~<sup>361</sup>
- (4)<sup>362</sup> ~~Environmental impact statement preparation notice~~ EISPN. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination ~~which that~~ shall be an ~~environmental impact statement preparation notice~~ EISPN and such notice shall be filed as early as possible ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>363</sup>.
- (2)~~c~~ ~~Negative declaration~~ FONSI. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination ~~which that~~<sup>364</sup> shall be a ~~negative declaration~~ FONSI, and the proposing agency or approving agency shall file such notice with the office as early as possible ~~after the determination is made pursuant to and in accordance with section 11-200-9~~<sup>365</sup>.

<sup>354</sup> Housekeeping. Breaks out three conditions into 3 three items and capitalizes each of the numbered items to make the language clearer.

<sup>355</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>356</sup> Housekeeping.

<sup>357</sup> Housekeeping.

<sup>358</sup> Removes redundant language. A FONSI and EISPN are by definition "determinations".

<sup>359</sup> Clarifies which of two determinations is to be issued.

<sup>360</sup> Removes unnecessary language on final EA filing requirements.

<sup>361</sup> This requirement is now addressed in the new proposed paragraph D.

<sup>362</sup> Housekeeping. Renumbering of all subsequent paragraphs of this section.

<sup>363</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

<sup>364</sup> Housekeeping.

<sup>365</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 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<sup>366</sup> the requirements in subsection (f).<sup>367</sup> For applicant  
4 actions, the approving agency shall send the notice of determination for an EISPN or  
5 FONSI to the applicant.<sup>368</sup>  
6
- 7 ~~(b)~~ The office shall publish the appropriate notice of determination in the periodic bulletin  
8 following receipt of the documents in subsection (a) by the office in accordance with  
9 section 11-200-3.  
10
- 11 ~~(e)~~ The notice of determination for a FONSI<sup>369</sup> shall indicate in a concise manner:  
12 (1) Identification of the<sup>370</sup> applicant or proposing agency;  
13 (2) Identification of the approving agency or<sup>371</sup> accepting authority;  
14 (3) ~~Brief~~ A brief<sup>372</sup> description of the<sup>373</sup> proposed action;  
15 (4) ~~Determination~~ The determination<sup>374</sup>;  
16 (5) Reasons supporting the<sup>375</sup> determination; and  
17 (6) ~~Name~~ The name<sup>376</sup>, title, contact information, including the email address,  
18 physical<sup>377</sup> address, and phone number of a contact person an individual  
19 representative of the proposing agency or applicant who may be contacted for  
20 further information.<sup>378/379</sup>

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<sup>366</sup> Housekeeping. (v0.1 omitted underlining)

<sup>367</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>368</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>369</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200-15.

<sup>370</sup> Housekeeping.

<sup>371</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>372</sup> Housekeeping.

<sup>373</sup> Housekeeping.

<sup>374</sup> Housekeeping.

<sup>375</sup> Housekeeping.

<sup>376</sup> Housekeeping.

<sup>377</sup> Modernizes the requirements to includes include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>378</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>379</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

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Environmental Council

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

1            The notice of determination for an EISPN shall be prepared pursuant to section 11-200-  
2            15.<sup>380</sup>

3  
4            (dg)    When an agency withdraws a document, determination, or both<sup>381</sup> pursuant to ~~its~~ the  
5            agency's<sup>382</sup> rules, the agency shall submit to the office a written letter informing the office  
6            of its withdrawal. The office shall publish notice of agency withdrawals in accordance  
7            with section 11-200-3.

8  
9            [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS § 343-5(c), 343-6)

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<sup>380</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

<sup>381</sup> Clarifies that an agency may withdraw a document (i.e., FEA) as well as being able to withdraw a determination (i.e., EISPN or FONSI).

<sup>382</sup> Clarifies that the withdrawal is pursuant to the agency's own rules rather than the EC's rules; determinations rest with the agency and are made pursuant to that agency's rules, procedures, and practices.



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Environmental Council

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

1 **§11-200-12 Significance Criteria**

- 2 (a) In considering the significance of potential environmental effects, agencies shall  
3 consider the sum of effects on the quality of the environment,<sup>383</sup> and shall evaluate the  
4 overall and cumulative effects of an action.  
5
- 6 (b) In determining whether an action may have a significant effect on the environment, the  
7 agency shall consider every phase of a proposed action, the expected consequences,  
8 both primary and secondary, and the cumulative as well as the short-term and long-term  
9 effects of the action. In most instances, an action shall be determined to have a  
10 significant effect on the environment if **it is likely to**<sup>384</sup>:
- 11 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~  
12 ~~cultural resource~~ Irrevocably **commits** ~~commit~~<sup>385</sup> a natural **or cultural**<sup>386</sup>  
13 ~~resource~~<sup>387</sup>;
- 14 (2) **Curtails** ~~Curtail~~ the range of beneficial uses of the environment;
- 15 (3) **Conflicts** ~~Conflict~~ with the state's ~~long-term~~ environmental policies or **long-term**  
16 **environmental**<sup>388</sup> goals and guidelines as expressed in chapter 344, HRS, **or**  
17 **other laws**,<sup>389</sup> and any revisions thereof and amendments thereto, court  
18 decisions, or executive orders;
- 19 (4) **Substantially Adversely**<sup>390</sup> ~~affects~~ **Have a substantial adverse effect on**<sup>391</sup> the  
20 economic ~~welfare~~, ~~or~~ social welfare, ~~or~~ cultural practices<sup>392</sup> of the community or  
21 State;
- 22 (5) **Substantially affects** **Have a substantial adverse effect on**<sup>393</sup> public health;

<sup>383</sup> Housekeeping.

<sup>384</sup> While section 5 of chapter 345, HRS, provides that an EIS is required for an action that “may” have a significant effect, the Supreme Court of Hawaii has interpreted the word “may” to mean “likely”. For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will “likely” have a significant effect on the environment.

<sup>385</sup> Housekeeping. (Makes each item read grammatically from the revised lead in language “is likely to”) and revises language to match the definition of “significant effect” in Section 343-2, HRS.

<sup>386</sup> Reinserts language regarding loss or destruction of cultural resources.

<sup>387</sup> Revises language to match the definition of “significance” in Section 343-2, HRS.

<sup>388</sup> Revises language to match the definition of “significance **significant effect**” in Section 343-2, HRS.

<sup>389</sup> Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>390</sup> Revises language to match the definition of “significance” in Section 343-2, HRS. Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act.

<sup>391</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

<sup>392</sup> Revises language to match the definition of “significance” in ~~Section~~ **section** 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.

<sup>393</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of “significant effect” in section 343-2, HRS.

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Environmental Council

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

- 1 (6) ~~Involves~~ **Involve** secondary **adverse**<sup>394</sup> impacts, such as population changes or  
2 effects on public facilities;
- 3 (7) ~~Involves~~ **Involve** a substantial degradation of environmental quality;
- 4 (8) Is individually limited but cumulatively has ~~considerable~~ **substantial adverse**<sup>395</sup>  
5 effect upon the environment or involves a commitment for larger actions;
- 6 (9) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>396</sup> a rare, threatened,  
7 or endangered species, or its habitat;
- 8 (10) ~~Detrimentially affects~~ **Have a substantial adverse effect on**<sup>397</sup> air or water quality  
9 or ambient noise levels;
- 10 (11) ~~Affects~~ **Have a substantial adverse effect on**<sup>398</sup> or is likely to suffer damage by  
11 being located in an environmentally sensitive area such as a flood plain, tsunami  
12 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh  
13 water, or coastal waters;
- 14 (12) ~~Substantially affects~~ **Have a substantial adverse effect on**<sup>399</sup> scenic vistas and  
15 viewplanes identified in county or state plans or studies; or,
- 16 (13) ~~Requires~~ **Require** substantial energy consumption.

17  
18 [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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<sup>394</sup> Retains the focus on secondary impacts and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>395</sup> Retains the focus on "considerable effects" through the synonym "substantial effects" and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>396</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>397</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS and maintains uniformity with the threshold of "substantially adverse" used in this section.

<sup>398</sup> Revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

<sup>399</sup> Retains the focus on substantial effects and revises language to mirror the emphasis on adverse impacts in the definition of "significant effect" in section 343-2, HRS.

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

- (a) Chapter 343, HRS, provides that whenever Whenever<sup>400</sup> an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement an EIS is required, such as exemption notices, FONSI, and EISPNs, EAs,<sup>401</sup> and previously accepted statements EIS EISs<sup>402</sup>.
- (b) Previous determinations, EAs,<sup>403</sup> and previously accepted statements EISs may be incorporated into an exemption notice, EA, EISPN, or EIS, by applicants and agencies and applicants<sup>404</sup> whenever the information contained therein is pertinent to the decision at hand<sup>405</sup> and has logical relevancy and bearing to the proposed action being considered<sup>406</sup>.
- (c) Agencies and applicants<sup>407</sup> shall not, without considerable pre-examination and comparison, use past determinations, EAs,<sup>408</sup> and previous previously accepted<sup>409</sup> statement EISs to apply to the action at hand. The proposed action for which a determination is sought<sup>410</sup> shall be thoroughly reviewed prior to the use of previous determinations, EAs,<sup>411</sup> and previously accepted statements EISs. Further, when previous determinations, EAs,<sup>412</sup> and previous statements EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered<sup>413</sup>.

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

<sup>400</sup> Removes the reference to chapter 343, HRS, so that the sentence is easier to read.

<sup>401</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>402</sup> Housekeeping.

<sup>403</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>404</sup> Housekeeping (word order).

<sup>405</sup> Removes unnecessary language and increases readability.

<sup>406</sup> Removes unnecessary language and clarifies that the action referenced is the proposed action.

<sup>407</sup> Clarifies that this subsection also applies to applicants preparing EISs.

<sup>408</sup> Clarifies that previously completed EAs may also be considered.

<sup>409</sup> Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.

<sup>410</sup> Removes unnecessary language and increases readability.

<sup>411</sup> Clarifies that previously completed EAs may also be considered.

<sup>412</sup> Clarifies that previously completed EAs may also be considered.

<sup>413</sup> Removes unnecessary language and increases readability.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

1 Subchapter 7 Preparation of Draft & Final Environmental Impact Statements

2 **§11-200-14 General Provisions**

3 (a)<sup>414</sup> Chapter 343, HRS, directs that in both agency and applicant actions where statements  
4 EISs are required, the proposing agency or applicant<sup>415</sup> preparing party shall prepare the  
5 EIS, submit it for review and comments, and revise it, taking into account all critiques  
6 and responses. Consequently, the EIS process involves more than the preparation of a  
7 document; it involves the entire process of research, discussion, preparation of a  
8 statement, and review. The EIS process shall involve at a minimum:

- 9 (1)<sup>416</sup> ~~identifying~~ Identifying environmental concerns,  
10 (2) Conducting no fewer than one EIS public scoping meeting<sup>417</sup> in the area  
11 affected by the proposed action.<sup>418</sup>  
12 (3) ~~obtaining~~ Obtaining various relevant data,  
13 (4) ~~conducting~~ Conducting necessary studies,  
14 (5) ~~receiving~~ Receiving public and agency input,  
15 (6) ~~evaluating~~ Evaluating alternatives, and  
16 (7) ~~proposing~~ Proposing measures for avoiding, minimizing, rectifying or reducing  
17 adverse impacts.

18 (b) To encourage early thorough and informed review of the EIS, the office shall develop a  
19 distribution list of persons and agencies with jurisdiction or expertise in certain areas  
20 relevant to various actions and make it available to the proposing agency or applicant.<sup>419</sup>

21  
22 ~~An EIS is meaningless without the conscientious application of the EIS process as a whole, and~~  
23 ~~shall not be merely a self-serving recitation of benefits and a rationalization of the proposed~~  
24 ~~action. Agencies shall ensure that statements EISs are prepared at the earliest opportunity in~~  
25 ~~the planning and decision-making process. This shall assure an early open forum for discussion~~  
26 ~~of adverse effects and available alternatives, and that the decision-makers will be enlightened to~~  
27 ~~any environmental consequences of the proposed action prior to decision making~~<sup>420, 421</sup>

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

414 Housekeeping to reflect insertion of a second paragraph, now subsection (b), in this section.

415 Clarifies that the proposing agency or the applicant must perform the following actions.

416 Housekeeping. Breaks the paragraph up and helps to see clarify the minimum elements of the EIS process. Renumbers paragraphs based on addition of public scoping meeting.

417 Requires at least one public scoping meeting for an EIS.

418 Specifies where the scoping meeting must be held.

419 Inserts and modifies a provision from section 11-200-21, Distribution, that is proposed to be deleted. This provision was the only meaningful provision remaining in section 11-200-21 after the incorporation of other edits to the section. Distribution lists should, at a minimum, be used for the distribution of the draft and final EIS, and may be referred to for consultation with knowledgeable persons and agencies throughout the environmental review process.

420 Emphasizes that the EIS process is to occur before committing to a particular course of action.

421 Moved to section 11-200-1, Purpose, to emphasize that the full environmental review process should be conscientiously applied in order to be meaningful.

1 **§11-200-15 Consultation Prior to Filing a Draft**  
2 **Environmental Impact Statement**

- 3 (a)<sup>422</sup> An EISPN, including one resulting from an agency authorizing the preparation of an EIS  
4 without first requiring an EA, shall indicate in a concise manner:  
5 (1) Identification of the proposing agency or applicant;  
6 (2) Identification of the accepting authority;  
7 (3) The determination to prepare an EIS<sup>423</sup>;  
8 (4) Reasons supporting the determination to prepare an EIS<sup>424</sup>;  
9 (5) A description of the proposed action and its location;  
10 (6) A description of the affected environment and include regional, location, and site  
11 maps;  
12 (7) Possible alternatives to the proposed action;  
13 (8) The proposing agency's or applicant's proposed scoping process, including when  
14 and where the EIS public scoping meeting or meetings will be held;  
15 (9) The name, title, contact information, including the email address, physical  
16 address, and phone number of a contact person an individual representative of  
17 the proposing agency or applicant who may be contacted for further  
18 information.<sup>425/426</sup>

- 19  
20 (ab) In the preparation of a draft EIS, proposing agencies and applicants shall consult all  
21 appropriate agencies noted in section 11-200-10(10), ~~and other~~<sup>427</sup> citizen groups, and  
22 concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end,  
23 agencies and applicants shall endeavor to develop a fully acceptable draft<sup>428</sup> EIS prior to  
24 the time the draft<sup>429</sup> EIS is filed with the office, through a full and complete consultation  
25 process, and shall not rely solely upon the review process to expose environmental  
26 concerns. ~~At the discretion of the proposing agency or an applicant, a~~ A public scoping  
27 meeting ~~to receive comments on the final environmental assessment (for the EIS~~  
28 ~~preparation notice determination) setting forth~~ addressing the scope of the draft EIS ~~may~~  
29 shall<sup>430</sup> be held within the thirty-day public review and comment period in subsection

<sup>422</sup> Creates a new paragraph and renumbers subsequent paragraphs.

<sup>423</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>424</sup> Distinguishes "the determination" from other determinations, such as a FONSI.

<sup>425</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement.

<sup>426</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

<sup>427</sup> Housekeeping.

<sup>428</sup> Clarifies that the document is a draft EIS.

<sup>429</sup> Clarifies that the document is a draft EIS.

<sup>430</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

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- 1 (bc),<sup>431</sup> provided that the proposing agency or applicant shall treat oral and written  
2 comments received at such a meeting as indicated in subsection (d)<sup>432</sup>.  
3
- 4 (bc) Upon publication of a preparation notice an EISPN in the periodic bulletin, agencies,  
5 groups, or individuals shall have a period of thirty days from the initial issue  
6 publication<sup>433</sup> date in which to request to become a consulted party and<sup>434</sup> to make  
7 written comments regarding the environmental effects of the proposed action. Upon  
8 written request by the consulted party and upon good cause shown, With good cause,  
9 the approving agency or accepting authority may extend the period for comments for a  
10 period not to exceed thirty additional<sup>435</sup> days.<sup>436</sup>  
11
- 12 (cd) — Upon receipt of the request, the proposing agency or applicant shall provide the  
13 consulted party with a copy of the environmental assessment or requested portions  
14 thereof and<sup>437</sup> the environmental impact statement preparation notice EISPN.  
15 Additionally, the proposing agency or applicant may provide any other information it  
16 deems necessary. The proposing agency or applicant may also contact other agencies,  
17 groups, or individuals which it feels may provide pertinent additional information.<sup>438</sup>  
18
- 19 (de) Any substantive<sup>439</sup> written<sup>440</sup> comments received by the proposing agency or applicant  
20 pursuant to this section shall be responded to in writing and as appropriate, incorporated  
21 into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS

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<sup>431</sup> Housekeeping.

<sup>432</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting to add clarity to the comment submitted and removes the preparer's interpretation recording of individual oral comments.

<sup>433</sup> Clarifies that thirty-day time period begins upon publication of the EISPN.

<sup>434</sup> Removes the requirement for an individual to become a consulted party in order to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

<sup>435</sup> Clarifies that the days are in addition to the first thirty-day period.

<sup>436</sup> Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party in order to request an extension to the comment period.

<sup>437</sup> Removes the requirement to provide a copy because the EISPN is available online to anyone at any time.

<sup>438</sup> All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations in order to consult with or share documents with outside parties.

<sup>439</sup> Removes threshold of "substantive" and clarifies that all written comments received by the proposing agency or applicant must be responded to in writing.

<sup>440</sup> Adds written as a requirement for being responded to and reproduced in the draft EIS.

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1 with the approving agency or accepting authority. Letters submitted **which that** contain  
2 no comments on the project but only serve to acknowledge receipt of the document do  
3 not require a written response. Acknowledgement of receipt of these items must be  
4 included in the ~~final environmental assessment or~~<sup>441</sup> ~~final statement~~ **draft EIS**<sup>442</sup>. **If a**  
5 **number of written comments are identical or very similar, the proposing agency or**  
6 **applicant may group the comments and prepare a single standard response for each**  
7 **group. The name of each commentor shall be included with the grouped response. One**  
8 **representative copy of identical or very similar comments may be included rather than**  
9 **reproducing each comment.**<sup>443</sup>

10  
11 **(f) A written summary of oral**<sup>444</sup> **comments made at any EIS public scoping meetings**<sup>445</sup>  
12 **identifying those persons or agencies that provided oral comments shall be included in**  
13 **the draft EIS prior to the filing of the draft EIS with the approving agency or accepting**  
14 **authority.**<sup>446/ 447</sup>

15  
16 **(g) A list of those persons or agencies who were consulted with prior to filing the draft EIS**  
17 **and had no comment shall be included in the draft EIS in a manner indicating that no**  
18 **comment was provided.**<sup>448</sup>

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

21

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<sup>441</sup> Removes final EA requirement because a final EA may not have been prepared.

<sup>442</sup> Replaces final EIS with draft EIS, mirroring the previous sentence.

<sup>443</sup> **Mirrors language inserted regarding written comments in Section 11-200-17(p) addressing voluminous and repetitive comments.**

<sup>444</sup> **Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.**

<sup>445</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings).

<sup>446</sup> **Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.**

<sup>447</sup> **Addresses how proposing agencies and applicants should include oral comments received during the public scoping meeting required under this section into the draft EIS. This language mirrors the way oral comments received on the Draft EIS are to be included in Final EIS.**

<sup>448</sup> **Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.**

1 **§11-200-16 Content Requirements**

2 ~~For draft Draft~~ and final EISs, ~~The environmental impact statement the document~~<sup>449</sup> shall  
3 contain an explanation of the environmental consequences of the proposed action, ~~pursuant to~~  
4 as required in section 11-200-17<sup>450</sup>. The contents shall fully declare the environmental  
5 implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably  
6 foreseeable<sup>451</sup> consequences of the action. In order that the public can be fully informed and  
7 that the agency can make a sound decision based upon the full range of responsible opinion on  
8 environmental effects, ~~a statement~~ an EIS shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.

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

449 Clarifies that Section section 11-200-16 applies to both draft and final EISs.

450 Explicitly connects section 11-200-16 and section 11-200-17.

451 Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history law, and federal guidance to provide clarity on the desired standard.



1 **§11-200-17 Content Requirements; Draft Environmental**  
2 **Impact Statement**

- 3 (a) The draft EIS, at a minimum, shall contain the information required in this section.  
4
- 5 (b) The draft EIS shall contain a summary sheet ~~which~~ that concisely discusses the  
6 following:  
7 (1) Brief description of the action;  
8 (2) Significant beneficial and adverse impacts (including cumulative impacts and  
9 secondary impacts);  
10 (3) Proposed mitigation measures;  
11 (4) Alternatives considered;  
12 (5) Unresolved issues; ~~and~~  
13 (6) Compatibility with land use plans and policies, and listing of permits or  
14 approvals; ~~and~~<sup>452</sup>  
15 (7) A list of relevant documents, including EAs and EISs, used to identify potential  
16 segmentation or cumulative impacts.<sup>453</sup>  
17
- 18 (c) The draft EIS shall contain a table of contents.  
19
- 20 (d) The draft EIS shall contain a separate and distinct section that includes ~~a statement of~~  
21 the<sup>454</sup> purpose and need for the proposed action.  
22
- 23 (e) The draft EIS shall contain a program or<sup>455</sup> project description which that shall include  
24 the following information, but need not supply extensive detail beyond that needed for  
25 evaluation and review of the environmental impact:  
26 (1) A detailed map (preferably a United States Geological Survey topographic map,  
27 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a  
28 related regional map;  
29 (2) ~~Statement of objectives~~ Objectives of the proposed action<sup>456</sup>;  
30 (3) General description of the action's technical, economic, social, cultural,<sup>457</sup> and  
31 environmental characteristics;

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<sup>452</sup> Housekeeping.

<sup>453</sup> This list is meant to help readers be aware that the proponent considered other actions that may be relevant from the perspective of segmentation or cumulative impacts and thereby be able to bring other documents to the attention of the proponent or decision maker. The list could be included in references, which is already a content requirement.

<sup>454</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>455</sup> Clarifies that the proposed action could be either a program or a project.

<sup>456</sup> "Statement" is a technical word in HRS 343 and HAR 11-200, so removed the word because it is used in a different sense here.

<sup>457</sup> Adds "cultural" to the characteristics, in line with Act 50 (2000).

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- 1 (4) Use of **public state or county**<sup>458</sup> funds or lands for the action;
- 2 (5) Phasing and timing of **the**<sup>459</sup> action;
- 3 (6) Summary **of** technical data, diagrams, and other information necessary to permit
- 4 an evaluation of potential environmental impact by commenting agencies and the
- 5 public; and
- 6 (7) Historic perspective.
- 7
- 8 (f) The draft EIS shall describe in a separate and distinct section **reasonable**<sup>460</sup>
- 9 alternatives ~~which that~~ could attain the objectives of the action ~~regardless of cost, in~~
- 10 ~~sufficient detail to explain why they were rejected~~<sup>461</sup> ~~and,~~<sup>462</sup> ~~for alternatives that were~~
- 11 ~~eliminated from detailed study, a~~ **briefly discussion of the reasons for eliminating**
- 12 ~~them~~<sup>463</sup>.<sup>464</sup> The section shall include a rigorous exploration and objective evaluation of
- 13 the environmental impacts of all such alternative actions.<sup>465</sup> Particular attention shall be
- 14 given to alternatives that might enhance environmental quality or avoid, reduce, or
- 15 minimize some or all of the adverse environmental effects, costs, and risks **of the**
- 16 **action**<sup>466</sup>. 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 action**<sup>467</sup>.
- 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 alternatives that were eliminated from detailed study,**
- 27 **the section shall contain a brief discussion of the reasons for not studying those**

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<sup>458</sup> **Aligns language with section 11-200-12.**

<sup>459</sup> **Housekeeping.**

<sup>460</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>461</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>462</sup> **Housekeeping.**

<sup>463</sup> ~~Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.~~

<sup>464</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>465</sup> Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.

<sup>466</sup> **Clarifies that the effects, costs, and risks are related to the action.**

<sup>467</sup> **Clarifies that alternative locations should be included for both programs and projects.**

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- 1 **alternatives in detail.**<sup>468</sup> For any agency actions, the discussion of alternatives shall  
2 include, where relevant, those alternatives not within the existing authority of the agency.  
3
- 4 (g) The draft EIS shall include a description of the environmental setting, including a  
5 description of the environment in the vicinity of the action, as it exists before  
6 commencement of the action, from both a local and regional perspective. Special  
7 emphasis shall be placed on environmental resources that are rare or unique to the  
8 region and the **program or**<sup>469</sup> project site (including natural or human-made resources of  
9 historic, **cultural,**<sup>470</sup> archaeological, or aesthetic significance); specific reference to  
10 related **programs or**<sup>471</sup> projects, public and private, existent or planned in the region shall  
11 also be included for purposes of examining the possible overall cumulative impacts of  
12 such actions. Proposing agencies and applicants shall also identify, where appropriate,  
13 population and growth characteristics of the affected area, ~~and~~ any population and  
14 growth assumptions used to justify the **proposed**<sup>472</sup> action, ~~and determine any~~<sup>473</sup>  
15 secondary population and growth impacts resulting from the proposed action and its  
16 alternatives. In any event, it is essential that the sources of data used to identify, qualify,  
17 or evaluate any and all environmental consequences be expressly noted in the draft  
18 EIS<sup>474</sup>.  
19
- 20 (h) The draft EIS shall include a statement description<sup>475</sup> of the relationship of the proposed  
21 action to land use and resource<sup>476</sup> plans, policies, and controls for the affected area.  
22 Discussion of how the proposed action may conform or conflict with objectives and  
23 specific terms of approved or proposed land use and resource<sup>477</sup> plans, policies, and  
24 controls, if any, for the area affected shall be included. Where a conflict or inconsistency  
25 exists, the ~~statement~~ draft EIS<sup>478</sup> shall describe the extent to which the agency or  
26 applicant has reconciled its proposed action with the plan, policy, or control, and the  
27 reasons why the agency or applicant has decided to proceed, notwithstanding the  
28 absence of full reconciliation. The draft EIS shall also contain a list of necessary  
29 approvals, required for the action, from governmental agencies, boards, or commissions  
30 or other similar groups having jurisdiction. The status of each identified approval shall  
31 also be described.

---

<sup>468</sup> **Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).**

<sup>469</sup> **Clarifies that both programs and projects are referred to.**

<sup>470</sup> Adds "cultural" in line with Act 50 (2000).

<sup>471</sup> **Clarifies that both programs and projects in the regional shall be considered.**

<sup>472</sup> **Parallels use of "proposed" later in the sentence and distinguishes this "action" from "action" used previously in this paragraph.**

<sup>473</sup> Housekeeping.

<sup>474</sup> Housekeeping.

<sup>475</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Uses "description" similar to other paragraphs.

<sup>476</sup> Includes natural resource plans such as water management plans.

<sup>477</sup> Includes natural resource plans such as water management plans.

<sup>478</sup> Clarifies that this applies to draft EISs.

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

- 1  
2 (i) The draft EIS shall include ~~a statement~~ an analysis<sup>479</sup> of the probable impact of the  
3 proposed action on the environment, and impacts of the natural or human environment  
4 on the ~~project~~ action.<sup>480</sup> ~~which~~ This analysis<sup>481</sup> shall include consideration of all phases  
5 of the action and consideration of all consequences on the environment; including direct  
6 and indirect effects ~~shall be included~~<sup>482</sup>. The interrelationships and cumulative  
7 environmental impacts of the proposed action and other related projects actions<sup>483</sup> shall  
8 be discussed in the draft EIS. ~~It~~<sup>484</sup> ~~should be realized~~ The draft EIS should recognize<sup>485</sup>  
9 that several actions, in particular those that involve the construction of public facilities or  
10 structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may  
11 well stimulate or induce secondary effects. These secondary effects may be equally  
12 important as, or more important than, primary effects, and shall be thoroughly discussed  
13 to fully describe the probable impact of the proposed action on the environment. The  
14 population and growth impacts of an action shall be estimated if expected to be  
15 significant, and an evaluation shall be<sup>486</sup> made of the effects of any possible change in  
16 population patterns or growth upon the resource base, including but not limited to land  
17 use, water, and public services, of the area in question. Also, if the proposed action  
18 constitutes a direct or indirect source of pollution as determined by any governmental  
19 agency, necessary data regarding these impacts<sup>487</sup> shall be incorporated into the EIS.  
20 The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and  
21 (m).  
22  
23 (j) The draft EIS shall include in a separate and distinct section a description of the  
24 relationship between local short-term uses of humanity's environment and the  
25 maintenance and enhancement of long-term productivity. The extent to which the  
26 proposed action involves trade-offs among short-term and long-term gains and losses  
27 shall be discussed. The discussion shall include the extent to which the proposed action  
28 forecloses future options, narrows the range of beneficial uses of the environment, or  
29 poses long-term risks to health or safety. In this context, short-term and long-term do not  
30 necessarily refer to any fixed time periods, but shall be viewed in terms of the  
31 environmentally significant consequences of the proposed action.  
32

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<sup>479</sup> Removes the word "statement," which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.

<sup>480</sup> Clarifies that this sentence applies to both projects and programs.

<sup>481</sup> Stylistic change to increase readability.

<sup>482</sup> Housekeeping.

<sup>483</sup> Clarifies that both projects and programs should be considered.

<sup>484</sup> Housekeeping. (v0.1 omitted strikethrough)

<sup>485</sup> Housekeeping.

<sup>486</sup> Housekeeping.

<sup>487</sup> Clarifies what the data should be about.

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- 1 (k) The draft EIS shall include in a separate and distinct section a description of all  
2 irreversible and irretrievable commitments of resources that would be involved in the  
3 proposed action should it be implemented. Identification of unavoidable impacts and the  
4 extent to which the action makes use of non-renewable resources during the phases of  
5 the action, or irreversibly curtails the range of potential uses of the environment shall  
6 also be included. The possibility of environmental accidents resulting from any phase of  
7 the action shall also be considered. ~~Agencies shall avoid construing the term "resources"~~  
8 ~~to mean only the labor and materials devoted to an action. "Resources" also means the~~  
9 ~~natural and cultural resources committed to loss or destruction by the action.~~  
10 "Resources" shall be construed to also mean the natural and cultural resources  
11 irreversibly and irretrievably committed to the action and not only to the labor and  
12 materials committed to the action.<sup>488</sup>  
13  
14 (l) The draft EIS shall address all probable adverse environmental effects ~~which that~~ cannot  
15 be avoided. Any adverse effects such as water or air pollution, urban congestion, threats  
16 to public health, or other consequences adverse to environmental goals and guidelines  
17 established by environmental response laws, coastal zone management laws, pollution  
18 control and abatement laws, and environmental policy ~~such as that~~ including  
19 those<sup>489</sup>found in chapters 128D (Environmental Response Law), 205A (Coastal Zone  
20 Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D  
21 (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F  
22 (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste  
23 Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used  
24 Oil), 342L (Underground Storage Tanks), 342N,<sup>490</sup> 342P (Asbestos and Lead), and 344  
25 (State Environmental Policy)<sup>491</sup>, HRS, ~~shall be included, including and~~<sup>492</sup> those effects  
26 discussed in other actions subsections of this paragraph section<sup>493</sup> which that are  
27 adverse and unavoidable under the proposed action must be addressed in the draft  
28 EIS<sup>494</sup>. Also, the rationale for proceeding with a proposed action, notwithstanding  
29 unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate  
30 what other interests and considerations of governmental policies are thought to offset  
31 the adverse environmental effects of the proposed action. The statement EIS shall also  
32 indicate the extent to which these stated countervailing benefits could be realized by  
33 following reasonable alternatives to the proposed action that would avoid some or all of  
34 the adverse environmental effects.  
35

<sup>488</sup> Clarified the language so that everyone, not just agencies, understand the use of the term "resources".

<sup>489</sup> Housekeeping.

<sup>490</sup> Repealed.

<sup>491</sup> Provides titles of each chapter referenced.

<sup>492</sup> Housekeeping.

<sup>493</sup> Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

<sup>494</sup> Housekeeping. Replaces "shall be included", which was deleted in v0.1.

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- 1 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or  
2 reduce ~~impact~~ impacts<sup>495</sup>, including provision for compensation for losses of cultural,  
3 community, historical, archaeological, fish and wildlife resources, including the  
4 acquisition of land, waters, and interests therein. Description of any mitigation measures  
5 included in the action plan to reduce significant, unavoidable, adverse impacts to  
6 insignificant levels, and the basis for considering these levels acceptable shall be  
7 included. Where a particular mitigation measure has been chosen from among several  
8 alternatives, the measures shall be discussed and reasons given for the choice made.  
9 ~~Included~~ The draft EIS shall include, where possible ~~and appropriate~~<sup>496</sup>, should  
10 ~~be~~<sup>497</sup> specific reference to the timing of each step proposed to be taken in the any<sup>498</sup>  
11 mitigation process, what performance bonds, if any, may be posted, and what other  
12 provisions are proposed to assure that the mitigation measures will in fact be taken.  
13
- 14 (n) The draft EIS shall include a separate and distinct section that summarizes unresolved  
15 issues and contains either a discussion of how such issues will be resolved prior to  
16 commencement of the action, or what overriding reasons there are for proceeding  
17 without resolving the problems issues<sup>499</sup>.  
18
- 19 (o) The draft EIS shall include a separate and distinct section that contains a list identifying  
20 all governmental agencies, other organizations and private individuals consulted in  
21 preparing the statement, and the identity of the persons, firms, or agency preparing the  
22 statement, by contract or other authorization, shall be disclosed.  
23
- 24 (p) The draft EIS shall include a separate and distinct section that contains:  
25 (1)<sup>500</sup> reproductions Reproductions of all substantive written comments and responses  
26 made during the consultation process thirty-day consultation period pursuant to  
27 section 11-200-15, and responses to those comments and a summary of any EIS  
28 public scoping meetings.<sup>501</sup> If a number of comments are identical or very similar,  
29 the proposing agency may group the comments and prepare a single standard  
30 response for each group. The name of each commentor shall be included with  
31 the grouped response. One representative copy of identical or very similar  
32 comments may be included rather than reproducing each comment<sup>502</sup> ; and a

<sup>495</sup> Housekeeping.

<sup>496</sup> Removes redundant language.

<sup>497</sup> Housekeeping.

<sup>498</sup> Changes reference to "any" mitigation measure process that may result from the analysis.

<sup>499</sup> Aligns language throughout sentence to reference "issues" rather than "issues" and "problems".

<sup>500</sup> Introduces subsections to increase clarity.

<sup>501</sup> Distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting. Summaries of EIS public comment periods are now addressed in subsection (p)(2).

<sup>502</sup> Aligns language with section 11-200-9.1 that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

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

1           (2)     A summary of oral<sup>503</sup> comments made at any EIS public scoping meetings<sup>504</sup> that  
2           identifies those persons or agencies that provided oral comments.<sup>505</sup> A list of  
3           those persons or agencies who were consulted and had no comment shall be  
4           included in the draft EIS in a manner indicating that no comment was provided.<sup>506</sup>  
5  
6 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-2, 343-5,  
7 343-6)  
8  
9  
10

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<sup>503</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting must be provided in the draft EIS.

<sup>504</sup> Clarifies that the draft EIS must contain the written comments, responses to them, and a summary of the public scoping meeting (or meetings). This sentence replicates the one deleted from subsection (p)(1) and creates another new subsection in order to distinguishes the process for including written comments from the process of including oral comments received at a public EIS scoping meeting.

<sup>505</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments.

<sup>506</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

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

The final EIS shall consist of:

- (1) The draft EIS prepared in compliance with section 11-200-17, as<sup>507</sup> revised to incorporate substantive<sup>508</sup> comments received during the consultation and<sup>509</sup> review processes;
- (2) Reproductions of all ~~letters~~ written comments received ~~containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held~~ during the ~~consultation and~~<sup>510</sup> review processes<sup>511</sup>; provided that if a number of written comments are identical or very similar, one representative copy of identical or very similar comments may be included rather than reproducing each comment;<sup>512</sup>
- (3) A list of persons, organizations, and public agencies commenting on the draft EIS;
- (4) The responses of the ~~applicant or~~ proposing agency or applicant<sup>513</sup> to each ~~substantive question, comment, or recommendation~~ written comments<sup>514</sup> received in the review and consultation processes, provided that if a number of written comments are identical or very similar, the proposing agency or applicant may group the comments and prepare a single standard response for each group. The name of each commentor shall be included with the grouped response;<sup>515</sup> ~~.~~<sup>516</sup>

<sup>507</sup> Connects this section with the previous section content requirements.

<sup>508</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>509</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>510</sup> Removes consultation because comments received during the consultation process are incorporated into the draft EIS under section 11-200-15.

<sup>511</sup> Aligns language with the EISPN and draft EIS requirements.

<sup>512</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>513</sup> Place "proposing agency" before "applicant".

<sup>514</sup> Removes the word for lack of clarity. EIS rules already require a commensurate response to a comment and new language has been added to allow for grouping of identical or similar comments in the way that NEPA allows.

<sup>515</sup> Aligns language with section 11-200-9.1 that reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commentor separately.

<sup>516</sup> Housekeeping.



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Environmental Council

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

- 1           (5) A written summary of oral comments made at any public hearings<sup>517</sup> identifying  
2           those persons or agencies that provided oral comments;<sup>518</sup>  
3           (6) A list of those persons or agencies who were consulted with in preparing the final  
4           EIS and had no comment shall be included in the final EIS in a manner  
5           indicating that no comment was provided;<sup>519</sup>; and  
6           (57) The text of the final EIS ~~which shall be~~<sup>520</sup> written in a format ~~which~~ that allows the  
7           reader to easily distinguish changes made to the text of the draft EIS.  
8

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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<sup>517</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

<sup>518</sup> Requires recognition of the persons and agencies that provide oral comment similar to the identification of persons and agencies submitting written comments. A list of these persons and agencies is sufficient.

<sup>519</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual.

<sup>520</sup> Housekeeping.

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

(a)<sup>521</sup> In developing the draft and final<sup>522</sup> EIS, preparers<sup>523</sup> proposing agencies and applicants shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public government<sup>524</sup> decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail<sup>525</sup> of the statement EIS. The scope of the statement EIS may vary with the scope of the proposed action and its impact. Data and analyses in a statement an EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements An EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement EIS, including cost benefit analyses and reports required under other legal authorities.

(b) The level of detail in an EIS may be more broad for actions for which site-specific impacts are not discernible due to the nature of the action, including but not limited to actions constituted of: (1) a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; (2) a sequence of projects contemplated by a single agency or applicant; (3) separate projects having generic or common impacts; (4) an entire plan having wide application or restricting the range of future alternative policies or projects, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; (5) implementation of a single project or multiple projects over a long timeframe; or (6) implementation of a single program or project<sup>526</sup> over a large geographic area. An EIS for these types of actions may be broader and more general than an EIS for discrete and site-specific actions and, where necessary, omit evaluating issues that are not yet ready for decision at the planning level. It may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions making up the larger action contemplated by the EIS and that are proposed to be carried

<sup>521</sup> Adding a new paragraph requires adding paragraph identifiers.

<sup>522</sup> Clarifies that this section applies to draft and final EISs.

<sup>523</sup> Removes introduction of a new term and replaces it with terms used consistently in the regulations. "proposing agencies and applicants".

<sup>524</sup> Global edit to reduce confusion regarding the meaning of "public".

<sup>525</sup> Removes "detail" because "detail" is already discussed as being commensurate with the potential for impact.

<sup>526</sup> Change "project or program" to "program or project".

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1 out in conformance with the conditions and mitigation measures presented in the EIS  
2 may require no or limited further review.<sup>527</sup>

3  
4 (c) In preparing any EIS, Care care<sup>528</sup> shall be taken to concentrate on important issues and  
5 to ensure that the statement EIS<sup>529</sup> remains an essentially self-contained document,  
6 capable of being understood by the reader without the need for undue cross-reference.

7  
8  
9 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-6)

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12

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<sup>527</sup> Distinguishes between the level of detail and style of assessment for actions that are more broad and conceptual in nature and those that are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address programs or projects at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to beginning assessment with project specificity. This paragraph, along with the proposed section 11-200-XX, Environmental Assessment Style and proposed amendments to section 11-200-13, Replaces the proposed Programmatic EIS sections in v0.1.

<sup>528</sup> Stylistic change to provide more clarity.

<sup>529</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-20 Filing of an Environmental Impact Statement**

2 (a) The proposing agency or applicant shall file the original (signed)<sup>530</sup> draft EIS with the  
3 accepting authority, ~~along with a minimum number of copies determined by the~~  
4 ~~accepting authority~~<sup>531</sup>. Simultaneously, a minimum number of four copies of<sup>532</sup> the draft  
5 EIS shall be filed with the office.

6  
7 (b) The proposing agency or applicant shall file the original (signed)<sup>533</sup> final EIS with the  
8 accepting authority, ~~along with a minimum number of copies determined by the~~  
9 ~~accepting authority~~<sup>534</sup>. Simultaneously, ~~four copies of~~<sup>535</sup> the final EIS shall be filed with  
10 the office.

11  
12 ~~(c) An EIS may be filed at any time at the office by the proposing agency or applicant in~~  
13 ~~accordance with section 11-200-3.~~<sup>536</sup>

14  
15 ~~(c)~~<sup>537</sup> The proposing agency or applicant shall sign and date the original copy of<sup>538</sup> the draft or  
16 final EIS and shall indicate that the ~~statement~~ EIS and all ancillary documents were  
17 prepared under the signatory's direction or supervision and that the information  
18 submitted, to the best of the signatory's knowledge fully addresses document content  
19 requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate.

20  
21 (d) The office shall be responsible for the publication of the notice of availability of the draft  
22 and final EIS in its bulletin.<sup>539</sup>

23  
24 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-6)

25  
26  
27  

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<sup>530</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>531</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>532</sup> OEQC only needs one copy, not four.

<sup>533</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>534</sup> Removes minimum number of copies requirement as it does not make sense for digital documents.

<sup>535</sup> OEQC only needs one copy, not four.

<sup>536</sup> Removes the paragraph because the language is unnecessary.

<sup>537</sup> Renumbers the paragraph.

<sup>538</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>539</sup> Incorporates requirement for the office to publish the notice of availability of the draft and final EIS from section 11-200-21, Distribution, which is proposed to be deleted.

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Environmental Council

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

1 **§11-200-21 Distribution<sup>540</sup>**

2 The office shall be responsible for the publication of the notice of availability of the EIS in its  
3 bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with  
4 jurisdiction or expertise in certain areas relevant to various actions) and make it available to the  
5 proposing agency or applicant.<sup>541</sup> and a list of public depositories, which shall include public  
6 libraries, where copies of the statements shall be available, and to the extent possible, the  
7 The<sup>542</sup> proposing agency or applicant shall make copies of<sup>543</sup> the EIS available to individuals  
8 requesting the EIS. The office's distribution list may be developed cooperatively among the  
9 applicant or proposing agency, the accepting authority, and the office; provided that<sup>544</sup> the office  
10 shall be responsible for determining the final list. The applicant or proposing agency shall  
11 directly distribute the required copies to those on the distribution list after the office has verified  
12 to the applicant or proposing agency the accuracy of the distribution list. For final statements,  
13 the agency or applicant shall give the commenter an option of requesting a copy of the final EIS  
14 or portions thereof.<sup>545/546</sup>

15  
16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-3, 343-5,  
17 343-6)

540 Deletes section because, due to the availability of the bulletin online, it is no longer necessary to  
specify the distribution process in such detail and to require distribution of paper copies of draft and final  
EISs. The remaining provisions are proposed to be incorporated in pertinent sections of the regulations.  
The requirement for the office to distribute the draft and final EIS has been moved to section 11-200-20,  
Filing, and the requirement for the office to produce and make available a distribution list has been slightly  
modified and moved to subsection (b) in section 11-200-14, General Provisions.

541 Removes the requirement for proposing agencies or applicants to verify a distribution list with the  
office. Electronic distribution of the documents and online availability of a distribution list developed by the  
office meet the objectives of this requirement more efficiently.

542 Removes outdated depositories requirement as all documents and determinations are available online  
to anyone.

543 Removes unnecessary language. The EIS will primarily be made available electronically, whereas  
“copies” implies a paper version.

544 Housekeeping.

545 Removes outdated requirement to provide the commenter with an option to request the document or a  
portion of it as all documents and determinations are available online to anyone.

546 Modernizes the distribution process. The office is required under chapter 343 to produce and distribute  
the bulletin. This process is now electronic and all published environmental review documents and  
determinations are available freely online. Because information is now available online, the concern that  
agencies and members of the public would not have notice of or access to the documents without a hard  
copy of the documents is no longer applicable.

1 **§11-200-22 Public Review of Environmental Impact**  
2 **Statements and Addenda to Draft Environmental Impact**  
3 **Statements Public Review and Response Requirements**  
4 **for Draft EISs and Addenda**<sup>547</sup>

5 (a) Public review shall not substitute for early and open discussion with interested persons  
6 and agencies;<sup>548</sup> concerning the environmental impacts of a proposed action. Review of  
7 the draft<sup>549</sup> EIS, shall serve to provide the public and other agencies an opportunity to  
8 discover the extent to which a proposing agency or applicant has examined  
9 environmental concerns and available alternatives.

10  
11 (b) The period for public review and for submitting written comments shall commence ~~as of~~  
12 from the date that<sup>550</sup> notice of availability of the draft EIS is initially issued in the periodic  
13 bulletin and shall continue for a period of forty-five days. Written comments to the  
14 approving agency or accepting authority, whichever is applicable, with a copy of the  
15 comments to the ~~applicant or~~ proposing agency or applicant<sup>551</sup>, shall be received or  
16 postmarked to the approving agency or accepting authority, within ~~said the~~<sup>552</sup> forty-five-  
17 day comment<sup>553</sup> period. Any comments outside of the forty-five day comment period  
18 need not be ~~considered or~~ responded to nor considered<sup>554</sup>.

19  
20 (c) The proposing agency or applicant shall respond ~~in writing~~<sup>555</sup> to the comments received  
21 or postmarked during the forty-five-day review period and incorporate the comments and  
22 responses in the final EIS. The response to comments shall include:

- 23 (1) Point-by-point discussion of the validity, significance, and relevance of  
24 comments; and  
25 (2) Discussion as to how each comment was evaluated and considered in ~~planning~~  
26 the proposed action preparing the final EIS<sup>556</sup>.

27 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.

28 ~~Response letters reproduced in the text of the final EIS~~<sup>557</sup> The response shall indicate

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<sup>547</sup> Rephrases title so that it is clearer that the whole section is about draft EISs.

<sup>548</sup> Housekeeping.

<sup>549</sup> Clarifies that the document is a draft EIS.

<sup>550</sup> Housekeeping."

<sup>551</sup> Place "proposing agency" before "applicant".

<sup>552</sup> Housekeeping.

<sup>553</sup> Clarifies that the forty-five days is for the comment period.

<sup>554</sup> Stylistic change to increase readability.

<sup>555</sup> Removes phrase because the response must be in the final EIS, which is written.

<sup>556</sup> Focus on how the comment is addressed in the final EIS rather than just action.

<sup>557</sup> Removes language because individual response letters are no longer required to be sent to individual commentors, but the final EIS should indicate which changes to the document were made in the response to comments section, without having to reproduce entire sections of changed content verbatim.

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1 verbatim changes that have been made to the text of the draft EIS. The response shall  
2 describe the disposition of significant environmental issues raised (e.g., revisions to the  
3 proposed **project action**<sup>558</sup> to mitigate anticipated impacts or objections, etc.). In  
4 particular, the issues raised when the **applicant's or** proposing agency's **or applicant's**<sup>559</sup>  
5 position is at variance with recommendations and objections raised in the comments  
6 shall be addressed in detail, giving reasons why specific comments and suggestions  
7 were not accepted, and factors of overriding importance warranting an override of the  
8 suggestions. If a number of comments are identical or very similar, the proposing agency  
9 or applicant may group the comments and prepare a single standard response for each  
10 group. The comments must be attached to the final EIS regardless of whether the  
11 agency or applicant believes they merit individual discussion in the body of the final  
12 EIS.<sup>560</sup>

13  
14 (d) An addendum document<sup>561</sup> to a draft ~~environmental impact statement~~ EIS shall  
15 reference the original draft ~~environmental impact statement~~ EIS to which<sup>562</sup> it attaches  
16 ~~to~~<sup>563</sup> and comply with all applicable filing, public review, and comment requirements set  
17 forth in subchapter 7.

18  
19 [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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21  
22

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<sup>558</sup> Provides clarity that revisions may be made to a project or a program.

<sup>559</sup> Place "proposing agency's" before "applicant's".

<sup>560</sup> Because the responses are included in the final EIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome **and** without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a, and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in **the** identical or similar comments. Because individual responses would no longer be sent, the requirement for OEQC to receive a copy of the response is no longer relevant.

<sup>561</sup> Removes the word document as it is unnecessary.

<sup>562</sup> Housekeeping.

<sup>563</sup> Housekeeping.

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Environmental Council

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

1 **§11-200-23 Acceptability**

2 (a) Acceptability of ~~a statement~~ a final EIS<sup>564</sup> shall be evaluated on the basis of whether the  
3 ~~statement~~ final EIS<sup>565</sup>, in its completed form, represents an informational instrument  
4 which that fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,<sup>566</sup>  
5 and adequately discloses and describes all identifiable environmental impacts and  
6 satisfactorily responds to review comments.

7  
8 (b) A ~~statement~~ final EIS<sup>567</sup> shall be deemed to be an acceptable document by the  
9 accepting authority or approving agency only if all of the following criteria are satisfied:

10 (1) The procedures for assessment, consultation process, review, and the  
11 preparation and submission of the ~~statement~~ EIS, from proposal of the action to  
12 publication of the final EIS,<sup>568</sup> have all been completed satisfactorily as specified  
13 in this chapter;

14 (2) The content requirements described in this chapter have been satisfied; and

15 (3) Comments submitted during the review process have received responses  
16 satisfactory to the accepting authority, or approving agency, and have been  
17 appropriately<sup>569</sup> ~~incorporated in~~ into the statement final EIS<sup>570</sup>, and comments  
18 and responses have been appended to the final EIS<sup>571</sup>.

19  
20 (c) For actions proposed by agencies, the proposing agency may request the office to make  
21 a recommendation regarding the acceptability or non-acceptability of the EIS. In all  
22 cases involving state funds or lands, the governor or ~~an~~ the governor's<sup>572</sup> authorized  
23 representative shall have final authority to accept the EIS. In cases involving only county  
24 funds or lands, the mayor of the respective county or ~~an~~ the mayor's<sup>573</sup> authorized  
25 representative shall have final authority to accept the EIS. The accepting authority shall  
26 take prompt measures to determine the acceptability or non-acceptability<sup>574</sup> of the  
27 proposing agency's statement EIS. In the event that the action involves ~~both~~ state and  
28 county lands ~~or~~, state or county funds, or both state and county lands and state and

<sup>564</sup> Clarifies that the document is a final EIS.

<sup>565</sup> Clarifies that the document is a final EIS.

<sup>566</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

<sup>567</sup> Clarifies that the document is a final EIS.

<sup>568</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

<sup>569</sup> Recognizes that not all comments are incorporated into an EIS.

<sup>570</sup> Clarifies that the document is a final EIS.

<sup>571</sup> Distinguishes comments responded to and resulted in changes to the final EIS and ensuring comments and responses are appended to the document.

<sup>572</sup> Housekeeping.

<sup>573</sup> Housekeeping.

<sup>574</sup> Housekeeping.



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1 **county**<sup>575</sup> funds,<sup>576</sup> the governor or ~~an~~ the governor's<sup>577</sup> authorized representative shall  
2 have final authority to accept the EIS.

3  
4 (d)<sup>578</sup> Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate  
5 accepting authority with both the proposing agency and the office. For any non-accepted  
6 EIS, the notice shall contain specific findings and reasons for non-acceptance. The office  
7 shall publish notice of the determination of acceptance or non-acceptance in the periodic  
8 bulletin in accordance with section 11-200-3. Acceptance of a required statement shall  
9 be a condition precedent to the use of state or county lands or funds in implementing the  
10 proposed action.

11  
12 (de) For actions proposed by applicants requiring approval from an agency, the applicant or  
13 accepting authority, which is the approving agency,<sup>579</sup> may request the office to make a  
14 recommendation regarding the acceptability or non-acceptability of the ~~statement~~ EIS. If  
15 the office decides to make a recommendation, it shall submit the recommendation to the  
16 applicant and the approving agency within the ~~thirty-day~~<sup>580</sup> period requiring an approving  
17 agency to determine the acceptability of the final EIS ~~and described in section 343-5(c),~~  
18 ~~HRS~~<sup>581</sup>. Upon acceptance or non-acceptance by the approving agency, the agency shall  
19 notify the applicant of its determination, and provide specific findings and reasons. The  
20 agency shall also provide a copy of this determination to the office for publication of a  
21 ~~notice~~<sup>582</sup> in the periodic bulletin. Acceptance of the required EIS shall be a condition  
22 precedent to approval of the request and commencement of the proposed action. ~~An~~  
23 ~~approving agency shall take prompt measures to determine the acceptability or non-~~  
24 ~~acceptability of the applicant's statement.~~<sup>583</sup> The agency shall notify the applicant and  
25 the office of the acceptance or non-acceptance of the final EIS within thirty days of the  
26 final EIS submission to the agency<sup>584, 585</sup> provided that the thirty-day period may, at the  
27 request of the applicant, be extended ~~at the request of the applicant~~<sup>586</sup> for a period not to  
28 exceed fifteen days. The request shall be made to the accepting authority in writing.

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<sup>575</sup> Provides clarity that "state and county" applies to both funds and lands.

<sup>576</sup> Clarifies ~~cases situations~~ where a proposed action has mixed state and county lands or funds or both lands and funds.

<sup>577</sup> Housekeeping.

<sup>578</sup> Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

<sup>579</sup> Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

<sup>580</sup> ~~Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.~~

<sup>581</sup> ~~Unnecessary language.~~

<sup>582</sup> Housekeeping.

<sup>583</sup> ~~Redundant when read with the following sentence that sets forth a timeline.~~

<sup>584</sup> Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.

<sup>585</sup> Housekeeping.

<sup>586</sup> Housekeeping.

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

1 Upon receipt of an applicant's written<sup>587</sup> request for an extension of the thirty-day  
2 acceptance period, the accepting authority shall notify the office and applicant in writing  
3 of its decision to grant or deny the request. The notice shall be accompanied by a copy  
4 of the applicant's request. An extension of the thirty-day acceptance period shall not be  
5 allowed granted<sup>588</sup> merely for the convenience of the accepting authority. In the event  
6 that the agency fails to make a determination of acceptance or non-acceptance for of<sup>589</sup>  
7 the statement EIS<sup>590</sup> within thirty days of the receipt of the final EIS, then the statement  
8 shall be deemed accepted.

9  
10 (ef) A non-accepted EIS may be revised by a proposing agency or applicant. The revision  
11 shall take the form of a revised draft EIS ~~document~~<sup>591</sup> which shall fully address the  
12 inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the  
13 changes made. The requirements for filing, distribution, publication of availability for  
14 review, acceptance or non-acceptance, and notification and publication of acceptability  
15 shall be the same as the requirements prescribed by sections 11-200-20, 11-200-21,<sup>592</sup>  
16 11-200-22, and 11-200-23 for an EIS submitted for acceptance. In addition, the revised  
17 draft EIS and the subsequent revised final EIS<sup>593</sup> shall be evaluated for acceptability on  
18 the basis of whether it satisfactorily addresses the findings and reasons for non-  
19 acceptance.

20  
21 (fg) A proposing agency or applicant may withdraw an EIS by simultaneously<sup>594</sup> sending a  
22 ~~letter~~ written notification<sup>595</sup> to the office and to the accepting authority<sup>596</sup> informing the  
23 office of the proposing<sup>597</sup> agency's or applicant's withdrawal. Subsequent resubmittal of  
24 the EIS shall meet all requirements for filing, distribution, publication, review,  
25 acceptance, and notification as a ~~new~~ draft<sup>598</sup> EIS.

26  
27 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
28  
29

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587 Connects to the previous sentence, clarifying that the request shall be made in writing.

588 Mirrors language within the provision.

589 Housekeeping.

590 Housekeeping.

591 Housekeeping.

592 Proposed to be deleted.

593 Added revised final EIS as the next step following a revised draft EIS.

594 Requires the office and accepting authority to be notified of the withdrawal at the same time.

595 Removes the requirement for a letter and simply requires written notification, such as by email.

596 Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

597 Clarifies that the agency withdrawing the proposal is the proposing agency.

598 Replaces "new" with "draft" to clarify at which stage the withdrawn EIS resumes.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 Subchapter 8 Appeals

2 **§11-200-24 Appeals to the Council**

3 An applicant, within sixty days after a<sup>599</sup> non-acceptance determination by the approving agency  
4 under section 11-200-23<sup>600</sup> of a statement a final EIS<sup>601</sup> by an agency<sup>602</sup>, may ~~to choose to~~<sup>603/604</sup>  
5 appeal the non-acceptance to the council, which within ~~thirty~~ <sup>sixty</sup><sup>605</sup> days of receipt of the  
6 appeal, shall notify the applicant of its determination to affirm the approving agency's non-  
7 acceptance or to reverse it<sup>606</sup>. The council chairperson shall include the appeal on the agenda  
8 of the council meeting immediately following the chairperson's receipt of the appeal. The council  
9 shall be deemed to have received the appeal on the date of the meeting for which the appeal is  
10 agendized.<sup>607</sup> In any affirmation or reversal of an appealed non-acceptance, the council shall  
11 provide the applicant and the agency with specific findings and reasons for its determination.  
12 The agency shall abide by the council's decision. An applicant may seek judicial review of the  
13 council's determination under chapter 91, HRS.<sup>608</sup> Pursuing an appeal by council does not  
14 abrogate an applicant's option under section 343-7(e), HRS, to bring judicial action.<sup>609/610</sup>

15  
16 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
17  
18

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<sup>599</sup> Housekeeping.

<sup>600</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>601</sup> Clarifies that the document is a final EIS.

<sup>602</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 23.

<sup>603</sup> ~~"Choose to appeal" emphasizes that this appeal pathway is optional, not mandatory.~~

<sup>604</sup> Removes this language as unnecessary. An applicant may appeal to the council or accept the decision of the agency.

<sup>605</sup> Because the Council regularly meets monthly, obtaining quorum and executing all responsibilities under HAR Chapter 11-201 is extremely difficult to accomplish within 30 days.

<sup>606</sup> Clarifies the Council's determination.

<sup>607</sup> Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

<sup>608</sup> Clarifies that chapter 343, HRS, requires agencies, but not applicants, to abide by the council's decision regarding acceptance or non-acceptance of an EIS. Under section HAR section 11-201-26, the council's procedural rules, appeals must be conducted as contested case hearings, enabling the applicant to seek judicial review of the council's decision under chapter 91-14, HRS.

<sup>609</sup> Clarifies that applicants may still pursue judicial remedies by directly going to court at any time, even while appealing in front of the council. This provision is in case the cCouncil is unable to obtain quorum after an applicant appeals to the cCouncil.

<sup>610</sup> Judicial review of the appeal is now addressed in the previous sentence.

1 Subchapter 9 National Environmental Policy Act

2 **§11-200-25 National Environmental Policy Act Actions:**  
3 **Applicability to Chapter 343, HRS**

4 When ~~the situation occurs where~~<sup>611</sup> a certain action will be subject both to the National  
5 Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
6 Public Law 94-83; 42 U.S.C. § sections<sup>612</sup> 4321-4347) and chapter 343, HRS, the following shall  
7 occur:

- 8 (1) The applicant or agency, upon discovery of its proposed action being subject to  
9 both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>613</sup>,  
10 shall notify the responsible federal agency, the office, and any agency with a  
11 definite interest in the action (as prescribed by chapter 343, HRS) ~~of the~~  
12 ~~situation.~~<sup>614</sup>  
13
- 14 (2) Where a federal agency determines that the proposed action is exempt<sup>615</sup> from  
15 review under the NEPA, the determination does not automatically constitute an  
16 exemption for the purposes of this chapter. In such cases, state and county  
17 agencies remain responsible for compliance with this chapter. However, the  
18 federal exemption may be considered in the state or county agency  
19 determination.<sup>616</sup>  
20
- 21 (3) Where a federal agency issues a FONSI and concludes that an statement EIS is  
22 not required under the NEPA, the this determination does not automatically  
23 constitute compliance with this chapter. In such cases, state and county agencies  
24 remain responsible for compliance with this chapter. However, the federal FONSI  
25 may be considered in the state or county agency determination.<sup>617</sup>  
26

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<sup>611</sup> Housekeeping.

<sup>612</sup> Housekeeping.

<sup>613</sup> Housekeeping.

<sup>614</sup> Housekeeping.

<sup>615</sup> The NEPA uses "exemption" and "exclusion" (along with "categorical") both interchangeably and in specific ways, depending on the federal agency. The use of "exempt" here is meant to capture "exemption" and "exclusion" under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

<sup>616</sup> States that federal categorical exemptions do not automatically result in HEPA exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

<sup>617</sup> Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.

**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

- 1 (24) The National Environmental Policy Act NEPA<sup>618</sup> requires that draft<sup>619</sup> statements  
2 EISs<sup>620</sup> be prepared by the responsible federal agency. In the case of actions for  
3 which an EIS pursuant to the NEPA has been prepared by the responsible  
4 federal agency, the draft and final federal statements EIS may be submitted to  
5 comply with this chapter,<sup>621</sup> so long as the federal EIS satisfies the EIS content  
6 requirements of this chapter and is not found to be inadequate under the NEPA  
7 by a court; by the council on environmental quality (CEQ) (or is at issue in pre-  
8 decision<sup>622/623</sup> referral to CEQ) under the NEPA regulations; or by the  
9 administrator of the United States Environmental Protection Agency under  
10 section 309 of the Clean Air Act, 41 U.S.C. 1857.<sup>624</sup> The responsible federal  
11 agency's supplemental EIS requirements shall apply in the these<sup>625</sup> cases in  
12 place of this chapter's supplemental EIS requirements.<sup>626</sup>  
13  
14 (5)<sup>627</sup> When the responsibility of preparing an EIS is delegated to a state or county  
15 agency, this chapter shall apply in addition to federal requirements under the  
16 National Environmental Policy Act NEPA<sup>628</sup>. The office and state or  
17 county<sup>629</sup> agencies shall cooperate with federal agencies to the fullest extent  
18 possible to reduce duplication between federal and state requirements. This  
19 cooperation, to the fullest extent possible, shall include joint environmental  
20 impact statements EISs with concurrent public review and processing at both  
21 levels of government. Where federal law has environmental impact statement  
22 EIS requirements in addition to but not in conflict with this chapter, the office and  
23 agencies shall cooperate in fulfilling the requirements so that one document shall  
24 comply with all applicable laws. Where the NEPA process requires earlier or

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<sup>618</sup> Housekeeping.

<sup>619</sup> Language is applicable to draft and final.

<sup>620</sup> Housekeeping.

<sup>621</sup> Based on Massachusetts' statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter's requirements provided it addresses this chapter's content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

<sup>622</sup> Housekeeping.

<sup>623</sup> Housekeeping.

<sup>624</sup> Adds a clause from State of Washington WAC Administrative Code to ensure that the federally-prepared statement meets federal standards for quality.

<sup>625</sup> Housekeeping.

<sup>626</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>627</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

<sup>628</sup> Housekeeping.

<sup>629</sup> Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.

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Environmental Council

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

1 more stringent public review and processing, that process shall satisfy this  
2 chapter so that duplicative consultation or review do not occur.<sup>630</sup>

3  
4 (36) In all actions where the use of state land or funds is proposed, the final ~~statement~~  
5 EIS shall be submitted to the governor or an authorized representative. In all  
6 actions when the use of county land or funds is proposed and no use of state  
7 land or funds is proposed<sup>631</sup>, the final ~~statement~~ EIS shall be submitted to the  
8 mayor, or an authorized representative. The final ~~statement~~ EIS in these  
9 instances shall first be accepted by the governor or mayor (or an authorized  
10 representative), prior to the submission of the same to the ~~Environmental~~  
11 ~~Protection Agency~~ or<sup>632</sup> responsible federal agency.

12  
13 (47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section<sup>633</sup> shall  
14 satisfy chapter 343, HRS, and no other ~~statement~~ EIS for the proposed action  
15 shall be required.

16  
17 [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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<sup>630</sup> Addresses, for example, situations where a federal agency's regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

<sup>631</sup> Clarifies the condition that requires the mayor or the mayor's authorized representative to be the accepting authority.

<sup>632</sup> Clarifies that it is the responsible federal agency issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

<sup>633</sup> Changes language to "this section" instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.

1 Proposed New Subchapter X Programmatic EISs

2 **~~Proposed §11-200-XX Programmatic Environmental~~**  
3 **~~Impact Statements~~<sup>634/635</sup>**

4 ~~(a) — Proposing agencies may prepare a PEIS on the adoption of a comprehensive~~  
5 ~~plan prepared in accordance with relevant laws. Impacts of individual actions proposed~~  
6 ~~to be carried out in conformance with these adopted plans and regulations and the~~  
7 ~~thresholds or conditions identified in the PEIS may require no or limited further review.~~

8  
9 ~~(b) — Approving agencies may allow applicants to prepare a PEIS on the adoption of a~~  
10 ~~comprehensive plan prepared in accordance with relevant laws. Impacts of individual~~  
11 ~~actions proposed to be carried out in conformance with these adopted plans and~~  
12 ~~regulations and the thresholds or conditions identified in the PEIS may require no or~~  
13 ~~limited further review.~~

14  
15 ~~(c) — Upon acceptance of a final programmatic PEIS:<sup>636</sup>~~

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

20 ~~(2) — Further chapter 343, HRS, environmental review must be prepared if a~~  
21 ~~subsequent proposed action was not addressed in the PEIS or the subsequent~~  
22 ~~proposed action exceeds the thresholds evaluated in the PEIS, and the~~  
23 ~~subsequent action may have a significant impact on the environmental. Further~~  
24 ~~review may be in the form of an EIS, EA, or exemption, for specific components~~  
25 ~~of the proposal.~~

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<sup>634</sup> ~~Provides directions on when environmental review covers a program type of action. Focus is on EISs and when analysis is sufficient versus when further, project-level review is warranted.~~

<sup>635</sup> ~~Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.~~

<sup>636</sup> ~~Housekeeping.~~

1 **Proposed ~~§11-200-XX Content Requirements; Draft~~**  
2 **Programmatic Environmental Impact Statement<sup>637/638</sup>**

3 ~~(a) The content requirements for a PEIS shall be the same as those for an EIS set~~  
4 ~~forth in subchapter 7, with the understanding that the level of detail in a PEIS may be~~  
5 ~~less than that of a project-level<sup>639</sup> EIS. The level of detail in a PEIS must be sufficient to~~  
6 ~~allow informed choice among planning-level alternatives and to develop broad mitigation~~  
7 ~~strategies. A PEIS should examine the interaction among proposed projects or plan~~  
8 ~~elements, and assess the cumulative effects. Like a project-level EIS, a PEIS also~~  
9 ~~includes an examination of alternatives.~~

10  
11 ~~(b) The PEIS may be broader and more general than a project-level EIS and omit~~  
12 ~~evaluating project-level issues that are not yet ready for decision at the planning level, or~~  
13 ~~it may evaluate project-level issues such as precise project footprints or specific design~~  
14 ~~details.~~

15  
16 ~~(c) A PEIS should discuss the logic and rationale for the choices advanced. It may~~  
17 ~~also include an assessment of specific impacts, if such details are available,<sup>640</sup> and~~  
18 ~~specific mitigation measures. It may be based on conceptual information in some cases.~~  
19 ~~It may discuss in general terms the constraints and sequences of events likely to result~~  
20 ~~in<sup>641</sup> any narrowing of future options. It may present and analyze in general terms~~  
21 ~~hypothetical scenarios that are likely to occur.~~  
22

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<sup>637</sup> Adds direction on content for a programmatic EIS. Acknowledges that a programmatic EIS may not have the same level of detail as a project-specific EIS.

<sup>638</sup> Deletes the proposed section in order to present an approach that does not require creating multiple new sections specifically for programmatic EAs and EISs, but rather provides more specificity as to the style of an EA or EIS and level of detail required when dealing with programs or projects such as those laid out in the proposed definition (now removed) of programmatic EIS in section 11-200-2. The guidance on detail is provided in existing section 11-200-19, Environmental Impact Statements Style, and proposed section 11-200-XX, Environmental Assessment Style.

<sup>639</sup> Uses consistent language to distinguish between project-level EISs and program-level EISs.

<sup>640</sup> Housekeeping.

<sup>641</sup> Increases readability.



1 Subchapter 10 Supplemental Statements

2 **§11-200-26 Supplemental EIS<sup>642</sup> General Provisions**

- 3 (a) A ~~statement~~ An EIS that is accepted with respect to a particular action is usually  
4 qualified by the size, scope, location, intensity, use, and timing of the action, among  
5 other things. ~~A statement~~ An EIS that is accepted with respect to a particular action shall  
6 satisfy the requirements of this chapter and no other supplemental statement EIS for that  
7 proposed action shall be required, to the extent that the action has not changed  
8 substantively in size, scope, intensity, use, location or timing, among other things. If  
9 there is any change in any of these characteristics which may have a significant effect,  
10 the original statement that was changed shall no longer be valid because an essentially  
11 different action would be under consideration and a supplemental statement shall be  
12 prepared and reviewed as provided by this chapter.<sup>643</sup> unless:  
13  
14 (1) — The project has changed substantively in the following characteristics: size,  
15 scope, use, location or timing, among other things, which may have a significant  
16 effect; or<sup>644</sup>  
17 (2) — New information indicating significant effects, which was not known and could not  
18 have been known at the time the EIS was accepted as complete, becomes  
19 available.<sup>645</sup>  
20  
21 (b) — In the case of newly discovered information, the decision to require preparation of a  
22 supplemental EIS must be based on the following criteria:  
23 (1) — The information can be from any source.  
24 (2) — The information must be newly discovered. It cannot be information that could  
25 have been included in comments filed in the original draft EIS or final EIS.  
26 (3) — The information must be important, indicating probably<sup>646</sup>significant  
27 environmental impacts.  
28 (4) — The information must not have been addressed in the prior EIS, or must have  
29 been inadequately addressed.<sup>647</sup>  
30  
31 (c) As long as there is no change in a proposed action or new information indicating  
32 significant effects resulting in individual or cumulative impacts not originally disclosed,

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<sup>642</sup> Clarifies in the title that this is about supplemental EISs (to distinguish it this section from those regarding regular EISs and programmatic EISs).

<sup>643</sup> Restores original SEIS section language.

<sup>644</sup> Reproduces the language from the definition and above paragraph, pairing it with item 2.

<sup>645</sup> Adds a change in knowledge as a potential reason to require a supplemental EIS.

<sup>646</sup> Housekeeping.

<sup>647</sup> Adds qualifications to what can be considered new knowledge so that not any change in knowledge could can be used as a reason to require a supplemental EIS.

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Environmental Council

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

1 the ~~statement~~ EIS associated with that action shall be deemed to comply with this  
2 chapter.

3

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

5

1 **§11-200-27 Supplemental EIS<sup>648</sup> Determination of**  
2 **Applicability**

3 The accepting authority or approving agency in coordination with the original accepting authority  
4 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
5 period of five years has elapsed since the acceptance of the final EIS, and the ~~project or~~  
6 program program or project<sup>649</sup> has not substantially commenced, the accepting authority or  
7 approving agency shall formally ~~re-evaluate~~ the need for a supplemental ~~statement~~ EIS and  
8 make a determination of whether a supplemental ~~statement~~ EIS<sup>650</sup> is required. A written  
9 summary of this evaluation and the<sup>651</sup> This determination will be submitted to the office for  
10 publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public  
11 review supplemental ~~statements~~ EISs whenever the proposed action for which ~~a~~ an<sup>652</sup>  
12 ~~statement~~ EIS was accepted has been modified to the extent that new or different  
13 environmental impacts are anticipated. A supplemental ~~statement~~ EIS shall be warranted when  
14 the scope of an action has been substantially increased, when the intensity of environmental  
15 impacts will be increased, when the mitigating measures originally planned ~~are~~ will not to be  
16 implemented, or where new circumstances or evidence have brought to light different or likely  
17 increased environmental impacts not previously dealt with.

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
20  
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<sup>648</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>649</sup> Changes “project or program” to “program or project” to be consistent with the definition of action.

<sup>650</sup> Housekeeping. This is a global edit throughout the document to make the language consistent with the definition of “Supplemental EIS”.

<sup>651</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

<sup>652</sup> Housekeeping.

1 **§11-200-28 Supplemental EIS<sup>653</sup> Contents**

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

8

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

10

11

12

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<sup>653</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

1 **§11-200-29 Supplemental EIS<sup>654</sup> Procedures**

2 The requirements of the thirty-day consultation, ~~file~~ public notice **filing**<sup>655</sup>, distribution, the forty-  
3 five-day public review, comments and response, and acceptance procedures, shall be the same  
4 for the supplemental ~~statement~~ EIS as is prescribed by this chapter for an EIS.

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

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<sup>654</sup> Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

<sup>655</sup> Stylistic change to increase readability.

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Environmental Council

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

1 **Proposed §11-200-XX<sup>656</sup> Retroactivity**

2  
3 (a) The rules shall apply immediately upon taking effect.

4  
5 (b) Hawaii Administrative Rules (HAR) chapter 11-200 (1996) shall continue to apply to  
6 environmental review of agency and applicant actions which began prior to the adoption  
7 of HAR chapter 11-200 (2018), provided that:

8  
9 (1) For EAs, if the draft EA was submitted to the office for publication and published  
10 by the office prior to the adoption of HAR chapter 11-200 (2018) and has not  
11 received a determination within a period of five years from the implementation of  
12 HAR chapter 11-200 (2018), then the proposing agency or applicant must comply  
13 with the requirements of HAR chapter 11-200 (2018). All subsequent  
14 environmental review, including an EISPN must comply with HAR chapter 11-200  
15 (2018).

16  
17 (2) For EISs, if the EISPN or the draft EIS was submitted to the office for publication  
18 and published by the office prior to the adoption of HAR chapter 11-200 (2018)  
19 and the final EIS has not been accepted within five years from the  
20 implementation of HAR chapter 11-200 (2018), then the proposing agency or  
21 applicant must comply with the requirements of HAR chapter 11-200 (2018).

22  
23 (3) A judicial proceeding regarding the proposed action shall not count towards the  
24 five-year time period.

25  
26 (c) Any exemption notice, FONSI, acceptance, or SEIS determination made in compliance  
27 with HAR chapter 11-200 (1996) will continue to be governed by HAR 11-200 (1996).

28  
29 (d) All exemptions issued after adoption of HAR chapter 11-200 (2018) must comply with  
30 HAR chapter 11-200 (2018), provided that existing exemption lists may be used for a  
31 period of five years after the adoption of HAR chapter 11-200 (2018), after which time  
32 the agency must revise its list and seek concurrence from council.<sup>657</sup>

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<sup>656</sup> Proposes a new section on when the revised rules take effect and how the revised rules apply to  
actions that have already completed the environmental review process or undergoing it at the time the  
revised rules take effect.

<sup>657</sup> Provides a period of time for agencies to update their exemption lists from “classes” to “types” of  
action.

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Environmental Council

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

1 Subchapter 11 Severability

2 **§11-200-30 Severability**

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

7

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

9

10 **Note**

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

19

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

22

23