

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)¹, establishes a system of environmental review at
6 the state and county levels ~~which~~ that² 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 the³ 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^{4, 5}

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

¹ Housekeeping.

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

³ Increases clarity.

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

⁵ 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 acceptability⁶ 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),⁷ ~~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.~~⁸ 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 final⁹ official who¹⁰ 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 EIS¹¹.
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~~ EA¹² or draft
20 ~~environmental impact statement~~ EIS¹³, prepared at the discretion of the proposing agency, or
21 applicant, or¹⁴ approving agency, and distinct from a supplemental EIS statement¹⁵, 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~~ EA¹⁶ or
24 the draft ~~environmental impact statement~~ EIS already filed with the office.
25

⁶ Housekeeping. Removes redundant language.

⁷ Housekeeping.

⁸ 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.

⁹ Removes "final" because it does not contribute additional meaning to the definition.

¹⁰ Housekeeping.

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

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

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

¹⁴ Clarifies that the approving agency does not always prepare the EA or EIS.

¹⁵ Removes redundant language. An EIS is by definition a statement.

¹⁶ 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~~ that¹⁷, 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~~¹⁸
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.~~¹⁹
13
- 14 "Approving agency" means an agency that issues an approval prior to ~~actual~~²⁰ implementation
15 of an applicant²¹ action, determines the need for an EA or EIS, and issues the exemption,
16 FONSI, or acceptance determination.²² The approving agency may be is also the²³ accepting
17 authority for an applicant final EIS.²⁴
18
- 19 "Concurrence" means the discretionary consent of the council to an agency exemption list.²⁵
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

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.²⁶

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)²⁷ 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 delayed²⁸. 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.²⁹

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.^{30/31}

²⁶ 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).

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

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

²⁹ 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.

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

³¹ 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**,³² air, water, minerals, flora, fauna, ambient noise, and
4 objects of historic, cultural,³³ or aesthetic significance.

5
6 "Environmental assessment" or "EA"³⁴ 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.~~³⁵ ~~It~~
9 ~~together Together~~³⁶ with a FONSI, **an EA**³⁷ satisfies chapter 343, HRS, when no EIS is
10 necessary,³⁸ ~~and facilitates preparation of an EIS when no EIS is determined to be~~³⁹ ~~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.**⁴⁰

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

18
19 "Environmental impact statement,"⁴² "statement,"⁴³ 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~~⁴². The initial statement EIS⁴³ 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~~⁴⁴ accepting
26 authority.

27

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

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

³⁴ Adds common abbreviation for use throughout the rules.

³⁵ 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.

³⁶ Stylistic change to increase readability.

³⁷ Stylistic change to increase readability.

³⁸ Stylistic change to increase readability.

³⁹ 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).

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

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

⁴² Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

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

⁴⁴ Unnecessary language so recommend removing.

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- 1 "EIS preparation notice,"⁴⁵ or "EISPN"⁴⁶, or "preparation notice" means a determination based
2 on an environmental assessment that the subject that an⁴⁷ 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.^{48/49/50/51}
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.⁵²
12
13 "Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a
14 public government⁵³ 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 action⁵⁴.
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 EISPN⁵⁵, 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.~~⁵⁶

⁴⁵ Housekeeping.

⁴⁶ Adds common abbreviation for use throughout the rules.

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

⁴⁸ Adds the direct-to-EIS pathway to the definition of an EISPN.

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

⁵⁰ 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.

⁵¹ Moved under "E" because EISPN is used more frequently than "preparation notice".

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

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

⁵⁴ Aligns with defined term "emergency action".

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

⁵⁶ 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~~⁵⁷ not have ~~the potential for~~⁵⁸ 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.⁵⁹

5
6 "Impacts" means the same as "effects".⁶⁰

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"⁶¹ 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.~~⁶²

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.⁶³

32
33
34
35

⁵⁷ Removes and adds language to align definition with chapter 343, HRS.

⁵⁸ Removes and adds language to align definition with chapter 343, HRS.

⁵⁹ Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

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

⁶¹ Adds common abbreviation for use throughout the rules.

⁶² Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

⁶³ Adds definition from HRS § 343-2.

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1 "Preparation notice," or "EIS preparation notice,"⁶⁴ or "EISPN"⁶⁵ means a determination based
2 on an environmental assessment that the subject ~~that an~~⁶⁶ 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.~~⁶⁷

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

10
11 ~~A "programmatically 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.~~^{68/69}

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

23
24 "Secondary impact,"¹ or "secondary effect,"¹ or "indirect impact,"¹ 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.⁷¹ ~~Indirect An indirect effects effect~~ may include
27 ~~a growth-inducing effects effect~~⁷² and other effects related to induced changes in the pattern of

⁶⁴ Housekeeping.

⁶⁵ Adds common abbreviation for use throughout the rules.

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

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

⁶⁸ ~~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.~~

⁶⁹ ~~This definition is deleted in order to present an alternative approach that does not require creating multiple new sections nor specifically defining "programmatically 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.~~

⁷⁰ Added definition because the term is used frequently throughout the rules.

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

⁷² ~~Stylistic change reflect changes made to previous sentence.~~

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

1 land use, population density or growth rate, and related effects on air, ~~and~~ water,⁷³ 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's⁷⁴ environmental policies or
7 long-term environmental goals and guidelines as established by law, ~~or~~⁷⁵ adversely affect the
8 economic welfare,⁷⁶ ~~or~~ social welfare, or⁷⁷ cultural practices of the community and State,⁷⁸ or
9 are otherwise set forth in section 11-200-12 ~~of this chapter~~⁷⁹.
10
11 "Substantial commencement" means that a an applicant⁸⁰ project or program action⁸¹ has
12 reached the stage where its last approval⁸² 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 action⁸³ for which an approval is not required, the project
15 or program program or project⁸⁴ has advanced to the point where financial commitments are in
16 place and scheduled and design is essentially complete.⁸⁵
17
18
19
20

⁷³ Housekeeping.

⁷⁴ Housekeeping.

⁷⁵ Housekeeping.

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

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

⁷⁸ 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".

⁷⁹ Housekeeping.

⁸⁰ Clarifies the distinction between applicant actions and government actions.

⁸¹ Increases readability.

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

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

⁸⁴ 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.

⁸⁵ 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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Environmental Council

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

1 "Supplemental ~~statement~~ EIS" means an additional environmental impact statement updated
2 EIS⁸⁶ 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 have⁸⁷ 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.⁸⁸
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

⁸⁶ Housekeeping.

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

⁸⁸ 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 agencies⁸⁹ 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.⁹⁰~~
16
- 17 (c ^b⁹¹) The bulletin shall be issued on the eighth and twenty-third days of each month. All
18 agencies and applicants submitting exemption notices⁹², draft ~~environmental~~
19 ~~assessments~~ EAs, ~~negative declarations~~ FONSIs, ~~preparation notices~~ EISPNS⁹³,
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~~ four⁹⁴ ~~working~~ business⁹⁵ days prior to the issue date. In case the deadline falls on
25 a state holiday or ~~nonworking~~ non-business⁹⁶ day, the deadline shall be the next ~~working~~
26 business⁹⁷ day.

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

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

⁹¹ Housekeeping. Renumbers paragraphs.

⁹² Aligns with section 11-200-8.

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

⁹⁴ OEQC does not need eight business days anymore to prepare the periodic bulletin anymore.

⁹⁵ Housekeeping. For computing time see section 1-29, HRS.

⁹⁶ Housekeeping.

⁹⁷ 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 data⁹⁸; applicable permits, including discretionary
7 approvals requiring preparation of the document under chapter 343, HRS;⁹⁹ 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**¹⁰⁰ 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

⁹⁸ 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.

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

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

1 Subchapter 4 Responsibilities

2 **§11-200-4 Identification of Approving Agency and¹⁰¹**
3 **Accepting Authority**

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

- 6 (1) The governor, or ~~an~~ the governor's¹⁰³ authorized representative, whenever an
7 action proposes the use of state lands or ~~the use of~~¹⁰⁴ state funds or,¹⁰⁵
8 whenever a state agency proposes an action ~~within~~ under¹⁰⁶ section 11-200-6(b);
9 or
10 (2) The mayor, or ~~an~~ the mayor's¹⁰⁷ 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**¹⁰⁸ funds, or
14 both **state and county**¹⁰⁹ lands and funds, the governor or the governor's authorized
15 representative shall have authority to accept the EIS.¹¹⁰

17 (b) Whenever an applicant proposes an action, the authority for requiring an EA or¹¹¹
18 statements EIS, and for making a determination regarding any required EA, and¹¹²
19 accepting any required statements EIS that have been prepared shall rest with the
20 approving¹¹³ agency ~~initially receiving and agreeing that initially received and agreed~~¹¹⁴
21 to process the request for an approval. With respect to EISs, the approving agency is
22 also called the accepting authority.¹¹⁵

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

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

¹⁰³ Housekeeping.

¹⁰⁴ Housekeeping.

¹⁰⁵ Housekeeping.

¹⁰⁶ Housekeeping.

¹⁰⁷ Housekeeping.

¹⁰⁸ **Makes clear that "state and county" funds are meant.**

¹⁰⁹ **Makes clear that "state and county" lands and funds are meant.**

¹¹⁰ 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.

¹¹¹ 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.

¹¹² 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.

¹¹³ Housekeeping. Clarifies **that** the **agency** is called the **approving agency**.

¹¹⁴ Housekeeping.

¹¹⁵ Clarifies that **the** approving agency is the accepting authority for applicants.

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Environmental Council

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

1
2 (c)¹¹⁶ __In the event that ~~there is~~¹¹⁷ more than one agency ~~that is proposing the action or~~
3 ~~in the case of applicants,~~¹¹⁸ more than one agency¹¹⁹ 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 343¹²⁰, HRS, the office, after consultation with
6 the agencies involved, shall determine which agency is responsible for compliance¹²¹. In
7 making the determination, the office shall ~~take into consideration, including, but not~~
8 ~~limited to, the following factors~~ consider¹²²:
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 greatest¹²³ access to information
14 relevant to the action's implementation and impacts¹²⁴; 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.¹²⁵
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

¹¹⁶ 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.

¹¹⁷ Stylistic change to increase readability.

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

¹¹⁹ Stylistic change to increase readability.

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

¹²¹ Stylistic change to increase readability.

¹²² Housekeeping.

¹²³ Helps to distinguish among agencies - all agencies have access to information.

¹²⁴ Clarifies what kind of information is meant.

¹²⁵ 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**¹²⁶ agency¹²⁷ actions ~~which that~~ are not exempt,¹²⁸ as defined in section
4 11-200-8, the proposing¹²⁹ agency shall assess at the earliest practicable time the
5 significance of potential impacts of ~~its actions the~~ **proposed agency's**¹³⁰ action¹³¹,
6 including the overall, cumulative impact in light of related past, present, and reasonably
7 foreseeable¹³² actions in the region area affected¹³³ ~~and further actions contemplated.~~¹³⁴
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.~~¹³⁵
13
14 (c) Use of state or county funds shall include any form of funding assistance flowing from
15 the State or **a**¹³⁶ 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,~~¹³⁷ the
23 planning and feasibility studies involve testing or other actions ~~which that~~ may have a
24 significant impact on the environment, ~~then~~¹³⁸ an environmental assessment EA or
25 EIS¹³⁹ shall be prepared.

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

¹²⁷ Housekeeping.

¹²⁸ Housekeeping.

¹²⁹ Housekeeping.

¹³⁰ **Housekeeping. Removed words to eliminate redundancy.**

¹³¹ Housekeeping.

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

¹³³ Replaces "region" with "area affected" to tie the geographic nexus to the potential impacts.

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

¹³⁵ Housekeeping. Redundant language.

¹³⁶ **Housekeeping.**

¹³⁷ Housekeeping.

¹³⁸ Housekeeping.

¹³⁹ Acknowledges direct-to-EIS pathway.

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Environmental Council

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

1
2 (e) Any amendment to existing county general plans, however denominated, which may
3 include ~~but not be limited to~~ development plans,¹⁴⁰ or community plans, where the
4 amendment would result in designations other than agriculture, conservation, or
5 preservation,¹⁴¹ requires an environmental assessment EA or EIS¹⁴². (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,¹⁴³ 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.¹⁴⁴
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.¹⁴⁵
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.¹⁴⁶
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)

¹⁴⁰ Housekeeping.

¹⁴¹ Housekeeping.

¹⁴² Direct-to-EIS is also an option.

¹⁴³ States the name of the statute for emergency proclamations.

¹⁴⁴ 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.

¹⁴⁵ 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.

¹⁴⁶ 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~~^{147/148}; or
6 (2) Actions that require certain types of amendments to existing county general
7 plans.

8 The ~~approving~~¹⁴⁹ 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.¹⁵⁰
15

- 16 (b) Chapter 343, HRS, establishes certain categories of action ~~which that~~ require the
17 agency ~~processing~~¹⁵¹ an applicant's request for approval to prepare an environmental
18 assessment the applicant to prepare an EA¹⁵². There are ~~seven six~~¹⁵³ geographical
19 categories, ~~five six~~¹⁵⁴ proposal elements component categories^{155/156}, and two
20 administrative categories.

- 21 (1) The ~~seven six~~¹⁵⁷ 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 Places¹⁵⁸;

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

¹⁴⁸ 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.

¹⁴⁹ Housekeeping. (Missing underlining in v0.1.)

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

¹⁵¹ Housekeeping. (Missing strikethrough in v0.1.)

¹⁵² Housekeeping.

¹⁵³ Reflects reorganization of “helicopter facility” to a component category.

¹⁵⁴ Reflects reorganization of “helicopter facility” to a component category.

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

¹⁵⁶ 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.

¹⁵⁷ Reflects reorganization of “helicopter facility” to a component category.

¹⁵⁸ 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 facility¹⁵⁹ within the State which that by way of their~~
8 ~~its¹⁶⁰ activities may affect;¹⁶¹ 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,¹⁶² 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 Places¹⁶³; 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.¹⁶⁴~~
- 18 (2) The five six¹⁶⁵ 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 facility¹⁶⁶ within the State that by way of their its¹⁶⁷
28 activities may affect;¹⁶⁸ 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,¹⁶⁹ 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 Places¹⁷⁰; 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.¹⁷¹

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,¹⁷² 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)

¹⁷⁰ Housekeeping. Unnecessary specificity.

¹⁷¹ 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.

¹⁷² 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 utility¹⁷³;
- 7 (2) An individual project action is a necessary precedent for to¹⁷⁴ a larger project
8 action¹⁷⁵;
- 9 (3) An individual project action¹⁷⁶ represents a commitment to a larger project
10 action¹⁷⁷; 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

¹⁷³ Incorporates the threshold for determining improper segmentation.

¹⁷⁴ Stylistic change.

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

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

¹⁷⁷ 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**¹⁷⁸

- 3 (a) ~~Chapter 343, HRS, states that procedures whereby specific Specific¹⁷⁹ types of actions,~~
4 ~~because they will probably have minimal or no significant effects, individually and~~
5 ~~cumulatively, on the environment,¹⁸⁰ can be declared exempt from the preparation of an~~
6 ~~EA.¹⁸¹ 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 jurisdiction¹⁸² or~~
11 ~~expertise as to the propriety of the exemption. Government Agency¹⁸³ 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.¹⁸⁴ 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 exemption¹⁸⁵ list represents exempt classes of action:~~
- 21 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment,
22 or topographical features, involving negligible minor¹⁸⁶ 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

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

¹⁷⁹ Removes unnecessary language.

¹⁸⁰ Removes unnecessary language. “Significant effects” as defined are “on the environment”.

¹⁸¹ Incorporates language direction directly from chapter 343, HRS.

¹⁸² Housekeeping.

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

¹⁸⁴ 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.

¹⁸⁵ Replaces “classes” language with “types”.

¹⁸⁶ 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,¹⁸⁷
5 if¹⁸⁸ 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 and¹⁸⁹ 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 Places¹⁹⁰, or that
24 are under consideration for placement on the national register or the Hawaii
25 Register of Historic Places¹⁹¹ 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 HRS¹⁹²;
- 28 (9) Zoning variances except shoreline set-back variances; ~~and~~¹⁹³
- 29 ~~(10) Continuing administrative activities including, but not limited to purchase of~~
30 ~~supplies and personnel-related actions.~~¹⁹⁴
- 31 (14 10¹⁹⁵) Acquisition of land and existing structures, including single or multi-unit
32 dwelling units, for the provision of affordable housing, involving no material

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

¹⁸⁸ Stylistic; mirrors provision below (B).

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

¹⁹⁰ Adds specificity.

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

¹⁹² Unnecessary language.

¹⁹³ Housekeeping.

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

¹⁹⁵ Housekeeping. Renumbering this and subsequent paragraphs.

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- 1 change of use beyond ~~that~~ previously existing uses,¹⁹⁶ and for which the
2 legislature has appropriated or otherwise authorized funding¹⁹⁷; and¹⁹⁸
3 (11) New construction of affordable housing that only has use of state or county lands
4 or funds as the sole¹⁹⁹ requirement for compliance with²⁰⁰ chapter 343, HRS, and
5 as proposed²⁰¹ 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.²⁰²
8
9 (b) All exemptions under the ~~classes~~ types²⁰³ 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~~ type²⁰⁴ 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~~²⁰⁵, ~~as long as these~~
21 ~~lists are consistent with both the letter and intent expressed in these exempt classes~~
22 ~~here~~²⁰⁶ ~~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)~~²⁰⁷ ~~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~~

¹⁹⁶ Clarifies what “that” refers to.

¹⁹⁷ 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.

¹⁹⁸ Housekeeping.

¹⁹⁹ 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.~~

²⁰⁰ Stylistic change.

²⁰¹ Removes ambiguity as to whether the project “as implemented” must be consistent.

²⁰² 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.

²⁰³ Housekeeping.

²⁰⁴ Housekeeping.

²⁰⁵ Housekeeping.

²⁰⁶ Housekeeping.

²⁰⁷ Inserts new paragraphs; subsequent paragraphs are renumbered.

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1 ~~require documentation.~~²⁰⁸ ~~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.~~²⁰⁹

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).~~²¹⁰ ~~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).~~²¹¹

14
15 ~~(e g) Each agency shall maintain records of such~~²¹² ~~actions, called exemption~~
16 ~~notices,~~²¹³ ~~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.~~²¹⁴

²⁰⁸ 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.

²⁰⁹ 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.

²¹⁰ 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.

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

²¹² Housekeeping.

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

²¹⁴ 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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Potential Amendments to HAR Chapter 11-200, Environmental Impact Statements

1 ~~(f h) — In the event the governor declares a state of emergency pursuant to chapter~~
2 ~~127A, HRS,²¹⁵ 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.²¹⁶~~

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.^{217/218}~~

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.²¹⁹~~

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.²²⁰~~

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.²²¹~~

²¹⁵ States the name of the statute for emergency proclamations.

²¹⁶ 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.

²¹⁷ 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.

²¹⁸ Deletes subsections (d) - (i) and reorganizes content to increase readability.

²¹⁹ 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.

²²⁰ 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.

²²¹ 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.²²²

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.²²³

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.²²⁴

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

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.

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

²²³ 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.

²²⁴ 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~~ may²²⁵ be affected;
- 12 (2) Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~
13 the²²⁶ statutory conditions under section 343-5(a), HRS, that²²⁷ 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~~²²⁸ potential impacts, ~~evaluate~~
17 evaluates²²⁹ the potential significance of each impact, and ~~provide~~ provides²³⁰ 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 referenced²³¹ in section 11-200-3(d)²³², and ~~four~~
29 ~~copies of~~²³³ 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

²²⁵ Housekeeping.

²²⁶ Housekeeping.

²²⁷ Housekeeping.

²²⁸ Housekeeping.

²²⁹ Housekeeping.

²³⁰ Housekeeping.

²³¹ Housekeeping.

²³² Housekeeping.

²³³ OEQC only needs one copy, not four.

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- 1 ~~preparation notice~~ EISPN, when applicable²³⁴) 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~~ Circulate²³⁵, 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~~ may²³⁶ be affected;
- 8 (7) Deposit, concurrently with the filing in paragraph (5), one paper²³⁷ 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 Center²³⁸;
- 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 determination²³⁹ or an
24 ~~environmental impact statement preparation notice~~ EISPN pursuant to the
25 requirements of section 11-200-11.2, ~~provided that for~~ For²⁴⁰ ~~preparation notice~~
26 EISPNS determinations²⁴¹, 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

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

²³⁵ 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.

²³⁶ Housekeeping.

²³⁷ 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.

²³⁸ 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.

²³⁹ Removes redundant term “definition” as a FONSI is by definition a determination.

²⁴⁰ Housekeeping.

²⁴¹ An EISPN is by definition a determination.

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- 1 (b) For applicant actions, except those actions ~~exempt~~ **excluded**²⁴² 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~~²⁴³ ~~complete the preparation of an environmental~~
13 ~~assessment prepare an EA in accordance with section 11-200-10;~~²⁴⁴
- 14 ~~(3)~~ **2**²⁴⁵ 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~~²⁴⁶ ~~to prepare a draft EA pursuant to section 11-200-10;~~²⁴⁷
- 23 ~~(4)~~ **3**^{248/249} 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;²⁵⁰
- 26 ~~(5)~~ **4**²⁵¹ 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

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

²⁴³ Narrows the language to focus on the EA on the content requirements.

²⁴⁴ **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.**

²⁴⁵ **Housekeeping (renumbering).**

²⁴⁶ Shifts the focus of preparation to the applicant per Act 172 (2012).

²⁴⁷ 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.

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

²⁴⁹ **Housekeeping (renumbering).**

²⁵⁰ 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.

²⁵¹ **Housekeeping (renumbering).**

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1 informational form referenced²⁵² in section 11-200-3(d)²⁵³ 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 applicable²⁵⁴) 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~~²⁵⁵;
7 ~~(6 5)~~²⁵⁶ Distribute ~~Circulate~~²⁵⁷, or require the applicant to ~~distribute~~ circulate²⁵⁸,
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)~~²⁵⁹ Deposit or require the applicant to deposit, concurrently with the filing in
13 paragraph (4), one paper²⁶⁰ 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~~²⁶¹;
16 ~~(8 7)~~²⁶² 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)²⁶³ ~~to provide~~ revise the draft EA with²⁶⁴ ~~whatever~~ information the approving
23 agency deems necessary in accordance with section 11-200-10²⁶⁵ to

²⁵² Housekeeping.

²⁵³ Housekeeping.

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

²⁵⁵ Adds language to ensure that other sections are fulfilled as well.

²⁵⁶ Housekeeping (renumbering).

²⁵⁷ 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.

²⁵⁸ 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.

²⁵⁹ Housekeeping (renumbering).

²⁶⁰ 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.

²⁶¹ 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.

²⁶² Housekeeping (renumbering).

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

²⁶⁴ Housekeeping.

²⁶⁵ 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 to²⁶⁶ inform its determination~~
2 ~~for a FONSI or EISPN, taking into account comments on the draft EA²⁶⁷;~~
3 (B) to incorporate comments as appropriate; and,
4 (C) to include copies of comment letters and the applicant's²⁶⁸ responses,
5 ~~(the The²⁶⁹ 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)²⁷⁰;~~
7 and
8 (9 8)²⁷¹ As appropriate, issue a ~~negative declaration FONSI determination²⁷²~~ 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 ~~days²⁷³ 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 ~~7²⁷⁴/²⁷⁵. 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 of²⁷⁶ alternatives, in addition to the proposed action in the environmental
20 assessment EA.²⁷⁷
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

²⁶⁶ Housekeeping. Removes redundant language.

²⁶⁷ 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.

²⁶⁸ Housekeeping.

²⁶⁹ Changes the sentence from a parenthetical statement to a standalone sentence.

²⁷⁰ Changes the sentence from a parenthetical statement to a standalone sentence.

²⁷¹ Housekeeping (renumbering).

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

²⁷³ Removes inadvertent strikethrough.

²⁷⁴ Paragraphs renumbered.

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

²⁷⁶ 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.

²⁷⁷ 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 prepared²⁷⁸ an EIS that begins with an
2 EISPN.²⁷⁹
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

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

²⁷⁹ 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 Impact²⁸⁰**
4 **Determinations & Addenda to Draft Environmental**
5 **Assessments**

6 (a) This section shall apply only if a proposing agency or an ~~approving agency~~ applicant²⁸¹
7 anticipates a ~~negative declaration~~ FONSI determination for a proposed action and that
8 agency ~~or applicant~~²⁸² has completed the draft EA requirements of section 11-200-9(a),
9 paragraphs (1), (2), (3), (4), (5), (6) and (7) ~~for agencies~~²⁸³, or section 11-200-9(b),
10 paragraphs (1), (2), (3), (4), (5) and (6) ~~for applicants~~²⁸⁴, 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~~²⁸⁵ ~~assessment EA was published in the periodic bulletin and~~
15 ~~shall continue for a period of thirty days.~~ Unless mandated otherwise by statute²⁸⁶, 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.²⁸⁷ Written comments sent²⁸⁸ to the proposing agency or approving agency
20 applicant²⁸⁹, whichever is applicable, with a copy of the comments to the applicant, if
21 applicable,²⁹⁰ ~~or proposing agency,~~²⁹¹ shall be received by²⁹² or postmarked to the
22 proposing agency or approving agency applicant²⁹³, 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~~²⁹⁴ 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.~~^{295/296}
6
7 (c) For agency actions, the proposing agency shall²⁹⁷ respond in writing to all comments
8 received or postmarked during the ~~thirty-day~~ ~~statutorily mandated~~²⁹⁸ review period,
9 incorporate comments ~~into the final EA~~²⁹⁹ as appropriate,³⁰⁰ and append the comments
10 and responses ~~in to~~³⁰¹ 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~~³⁰² ~~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.³⁰³
20
21

²⁹⁴ Stylistic change.

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

²⁹⁶ 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.

²⁹⁷ Acknowledges that some statutes may modify the public review and comment period.

²⁹⁸ Acknowledges that other statutes may require comment periods of varying lengths.

²⁹⁹ Clarifies that the comments are included in the final EA.

³⁰⁰ Housekeeping.

³⁰¹ Housekeeping.

³⁰² 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.

³⁰³ 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~~³⁰⁴
3 incorporate ~~or~~ comments into the final EA as appropriate, and³⁰⁵ append the comments
4 and responses ~~in to~~³⁰⁶ the final ~~environmental assessment~~ EA. If a number of comments
5 are identical or very similar, the applicant may group the comments ~~a and~~³⁰⁷ 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.³⁰⁸ 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.³⁰⁹ ~~Each~~
10 ~~response shall be sent directly to the person commenting with a copy to the office.~~³¹⁰ 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.~~³¹¹
14
15 (e) An addendum document to a draft ~~environmental assessment~~ EA shall reference the
16 original draft ~~environmental~~³¹² ~~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

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

³⁰⁵ Clarifies that the comments are incorporated into the final EA.

³⁰⁶ Housekeeping.

³⁰⁷ Housekeeping.

³⁰⁸ 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.

³⁰⁹ 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.

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

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

³¹² 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.³¹³
33

³¹³ 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.³¹⁴
4

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

³¹⁴ 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~~ applicant³¹⁵ shall prepare ~~any a~~³¹⁶ draft or final
3 environmental assessment EA of each ~~proposed for any~~³¹⁷ action ~~not exempt under section 11-~~
4 ~~200-8~~³¹⁸ 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 preparing³¹⁹ the assessment;
- 11 (4) General description of the action's technical, economic, social, cultural³²⁰ 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 analysis³²¹ 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 EAs³²²;
- 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 required³²³ permits and approvals (State, federal, county) ~~required and~~
26 identification of which are considered to be discretionary³²⁴; and

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

³¹⁶ Housekeeping.

³¹⁷ Stylistic change.

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

³¹⁹ ~~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.

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

³²¹ 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.

³²² Stylistic change to improve clarity.

³²³ Housekeeping. Moves the word required from the end of the clause to before the word "permits".

³²⁴ 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.

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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 to³²⁵the 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)
7

8

9

10

11

12

13

14 **§11-200-11 REPEALED.**

15 [R AUG 31 1996]
16

17

18

³²⁵ Housekeeping.

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

- 3 (a) After:³²⁶
4 (1) ~~preparing~~ Preparing, or causing to be prepared,³²⁷ ~~an environmental assessment~~
5 ~~a draft EA, and~~³²⁸
6 (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~³²⁹
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, ~~the proposing agency or approving agency~~³³⁰
10 shall issue a notice of ~~determination~~³³¹ ~~which that shall be~~³³² an anticipated negative
11 ~~declaration~~ FONSI subject to the public review provisions of section 11-200-9.1.
12
13 (b)³³³ The proposing agency or approving agency shall ~~also file such the~~³³⁴ notice and
14 supporting draft EA³³⁵ with the office as early as possible after the determination is made
15 pursuant to and in accordance with section 11-200-9,³³⁶ and the requirements in
16 subsection (e)³³⁷ ~~along with four copies of the supporting environmental assessment~~³³⁸.
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.³³⁹
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.

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

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

³²⁸ Housekeeping. Specifies draft EA.

³²⁹ Housekeeping.

³³⁰ Housekeeping.

³³¹ Removes redundant language. An anticipated FONSI is defined as a "determination".

³³² Removes redundant language.

³³³ Housekeeping. Renumbering of all subsequent paragraphs of this section.

³³⁴ Housekeeping.

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

³³⁶ Housekeeping.

³³⁷ Housekeeping.

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

³³⁹ 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 the³⁴⁰ **applicant or** proposing agency **or applicant**³⁴¹;
4 (2) Identification of the approving agency or³⁴² accepting authority;
5 (3) ~~Brief~~ **A brief**³⁴³ description of the³⁴⁴ **proposed** action;
6 (4) ~~Determination~~ **The determination** anticipated FONSI³⁴⁵;
7 (5) Reasons supporting the³⁴⁶ **anticipated FONSI determination**; and
8 (6) ~~Name~~ **The name**³⁴⁷, ~~title, contact information, including the email address,~~
9 **physical**³⁴⁸ 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.³⁴⁹
- 12
- 13 (de) When an agency withdraws a document, determination, or both³⁵⁰ pursuant to ~~its~~ the
14 agency's³⁵¹ rules, the agency shall submit to the office a written letter informing the office
15 of ~~its~~ the³⁵² withdrawal **and the rationale for the withdrawal**³⁵³. 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

³⁴⁰ Housekeeping.

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

³⁴² 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.

³⁴³ Housekeeping.

³⁴⁴ Housekeeping.

³⁴⁵ Housekeeping.

³⁴⁶ Housekeeping.

³⁴⁷ Housekeeping.

³⁴⁸ **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.

³⁴⁹ **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.**

³⁵⁰ 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).

³⁵¹ 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.

³⁵² **Housekeeping.**

³⁵³ **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:³⁵⁴
- (1) ~~preparing~~ Preparing, or causing to be prepared,³⁵⁵ a final environmental assessment EA,
- (2) ~~reviewing~~ Reviewing any public and agency comments, ~~if any, and~~³⁵⁶
- (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~~
notice³⁵⁷ of ~~determination for~~³⁵⁸ an EISPN or FONSI³⁵⁹ 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,~~³⁶⁰ 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.~~³⁶¹
- (4)³⁶² ~~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~~³⁶³.
- (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~~³⁶⁴ 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~~³⁶⁵.

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

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

³⁵⁶ Housekeeping.

³⁵⁷ Housekeeping.

³⁵⁸ Removes redundant language. A FONSI and EISPN are by definition "determinations".

³⁵⁹ Clarifies which of two determinations is to be issued.

³⁶⁰ Removes unnecessary language on final EA filing requirements.

³⁶¹ This requirement is now addressed in the new proposed paragraph D.

³⁶² Housekeeping. Renumbering of all subsequent paragraphs of this section.

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

³⁶⁴ Housekeeping.

³⁶⁵ 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, addressing³⁶⁶ the requirements in subsection (f).³⁶⁷ For applicant
4 actions, the approving agency shall send the notice of determination for an EISPN or
5 FONSI to the applicant.³⁶⁸
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 FONSI³⁶⁹ shall indicate in a concise manner:
12 (1) Identification of the³⁷⁰ applicant or proposing agency;
13 (2) Identification of the approving agency or³⁷¹ accepting authority;
14 (3) ~~Brief~~ A brief³⁷² description of the³⁷³ proposed action;
15 (4) ~~Determination~~ The determination³⁷⁴;
16 (5) Reasons supporting the³⁷⁵ determination; and
17 (6) Name The name³⁷⁶, title, contact information, including the email address,
18 physical³⁷⁷ 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.^{378/379}

³⁶⁶ Housekeeping. (v0.1 omitted underlining)

³⁶⁷ 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.

³⁶⁸ 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).

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

³⁷⁰ Housekeeping.

³⁷¹ 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.

³⁷² Housekeeping.

³⁷³ Housekeeping.

³⁷⁴ Housekeeping.

³⁷⁵ Housekeeping.

³⁷⁶ Housekeeping.

³⁷⁷ 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.

³⁷⁸ 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.

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

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

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 15.³⁸⁰

3
4 (dg) When an agency withdraws a document, determination, or both³⁸¹ pursuant to ~~its~~ the
5 agency's³⁸² 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)

10
11
12

³⁸⁰ 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.

³⁸¹ 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).

³⁸² 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.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

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,³⁸³ 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**³⁸⁴:
- 11 (1) ~~Involves an irrevocable commitment to loss or destruction of any natural or~~
12 ~~cultural resource~~ Irrevocably **commits** ~~commit~~³⁸⁵ a natural **or cultural**³⁸⁶
13 ~~resource~~³⁸⁷;
- 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**³⁸⁸ goals and guidelines as expressed in chapter 344, HRS, **or**
17 **other laws**,³⁸⁹ and any revisions thereof and amendments thereto, court
18 decisions, or executive orders;
- 19 (4) **Substantially Adversely**³⁹⁰ ~~affects~~ **Have a substantial adverse effect on**³⁹¹ the
20 economic ~~welfare~~, ~~or~~ social welfare, ~~or~~ cultural practices³⁹² of the community or
21 State;
- 22 (5) **Substantially affects** **Have a substantial adverse effect on**³⁹³ public health;

³⁸³ Housekeeping.

³⁸⁴ 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.

³⁸⁵ 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.

³⁸⁶ Reinserts language regarding loss or destruction of cultural resources.

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

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

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

³⁹⁰ 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.

³⁹¹ 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.

³⁹² 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.

³⁹³ 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**³⁹⁴ 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**³⁹⁵
5 effect upon the environment or involves a commitment for larger actions;
- 6 (9) ~~Substantially affects~~ **Have a substantial adverse effect on**³⁹⁶ a rare, threatened,
7 or endangered species, or its habitat;
- 8 (10) ~~Detrimentially affects~~ **Have a substantial adverse effect on**³⁹⁷ air or water quality
9 or ambient noise levels;
- 10 (11) ~~Affects~~ **Have a substantial adverse effect on**³⁹⁸ 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**³⁹⁹ 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)

19
20

³⁹⁴ 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.

³⁹⁵ 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.

³⁹⁶ 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.

³⁹⁷ 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.

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

³⁹⁹ 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 Whenever⁴⁰⁰ 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,⁴⁰¹ and previously accepted statements EIS EISs⁴⁰².
- (b) Previous determinations, EAs,⁴⁰³ and previously accepted statements EISs may be incorporated into an exemption notice, EA, EISPN, or EIS, by applicants and agencies and applicants⁴⁰⁴ whenever the information contained therein is pertinent to the decision at hand⁴⁰⁵ and has logical relevancy and bearing to the proposed action being considered⁴⁰⁶.
- (c) Agencies and applicants⁴⁰⁷ shall not, without considerable pre-examination and comparison, use past determinations, EAs,⁴⁰⁸ and previous previously accepted⁴⁰⁹ statement EISs to apply to the action at hand. The proposed action for which a determination is sought⁴¹⁰ shall be thoroughly reviewed prior to the use of previous determinations, EAs,⁴¹¹ and previously accepted statements EISs. Further, when previous determinations, EAs,⁴¹² and previous statements EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the proposed action then being considered⁴¹³.

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

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

⁴⁰¹ 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.

⁴⁰² Housekeeping.

⁴⁰³ 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.

⁴⁰⁴ Housekeeping (word order).

⁴⁰⁵ Removes unnecessary language and increases readability.

⁴⁰⁶ Removes unnecessary language and clarifies that the action referenced is the proposed action.

⁴⁰⁷ Clarifies that this subsection also applies to applicants preparing EISs.

⁴⁰⁸ Clarifies that previously completed EAs may also be considered.

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

⁴¹⁰ Removes unnecessary language and increases readability.

⁴¹¹ Clarifies that previously completed EAs may also be considered.

⁴¹² Clarifies that previously completed EAs may also be considered.

⁴¹³ 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)⁴¹⁴ Chapter 343, HRS, directs that in both agency and applicant actions where statements
4 EISs are required, the proposing agency or applicant⁴¹⁵ 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)⁴¹⁶ ~~identifying~~ Identifying environmental concerns,
10 (2) Conducting no fewer than one EIS public scoping meeting⁴¹⁷ in the area
11 affected by the proposed action.⁴¹⁸
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.⁴¹⁹

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~~^{420, 421}

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)⁴²² 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 EIS⁴²³;
8 (4) Reasons supporting the determination to prepare an EIS⁴²⁴;
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.^{425/426}

- 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~~⁴²⁷ 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 draft⁴²⁸ EIS prior to
24 the time the draft⁴²⁹ 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 shall⁴³⁰ be held within the thirty-day public review and comment period in subsection

⁴²² Creates a new paragraph and renumbers subsequent paragraphs.

⁴²³ Distinguishes "the determination" from other determinations, such as a FONSI.

⁴²⁴ Distinguishes "the determination" from other determinations, such as a FONSI.

⁴²⁵ 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.

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

⁴²⁷ Housekeeping.

⁴²⁸ Clarifies that the document is a draft EIS.

⁴²⁹ Clarifies that the document is a draft EIS.

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

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

- 1 (bc),⁴³¹ provided that the proposing agency or applicant shall treat oral and written
2 comments received at such a meeting as indicated in subsection (d)⁴³².
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 publication⁴³³ date in which to request to become a consulted party and⁴³⁴ 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 additional⁴³⁵ days.⁴³⁶
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 and⁴³⁷ 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.⁴³⁸
18
- 19 (de) Any substantive⁴³⁹ written⁴⁴⁰ 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

⁴³¹ Housekeeping.

⁴³² 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.

⁴³³ Clarifies that thirty-day time period begins upon publication of the EISPN.

⁴³⁴ 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.

⁴³⁵ Clarifies that the days are in addition to the first thirty-day period.

⁴³⁶ 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.

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

⁴³⁸ 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.

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

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

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

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~~⁴⁴¹ ~~final statement~~ **draft EIS**⁴⁴². **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.**⁴⁴³

10
11 **(f) A written summary of oral**⁴⁴⁴ **comments made at any EIS public scoping meetings**⁴⁴⁵
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.**^{446/ 447}

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.**⁴⁴⁸

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

21

⁴⁴¹ Removes final EA requirement because a final EA may not have been prepared.

⁴⁴² Replaces final EIS with draft EIS, mirroring the previous sentence.

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

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

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

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

⁴⁴⁷ **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.**

⁴⁴⁸ **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~~⁴⁴⁹ shall
3 contain an explanation of the environmental consequences of the proposed action, ~~pursuant to~~
4 as required in section 11-200-17⁴⁵⁰. The contents shall fully declare the environmental
5 implications of the proposed action and shall discuss all ~~relevant and feasible~~ reasonably
6 foreseeable⁴⁵¹ 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)

13

14

15

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~~⁴⁵²
15 (7) A list of relevant documents, including EAs and EISs, used to identify potential
16 segmentation or cumulative impacts.⁴⁵³
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 the⁴⁵⁴ purpose and need for the proposed action.
22
- 23 (e) The draft EIS shall contain a program or⁴⁵⁵ 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 action⁴⁵⁶;
30 (3) General description of the action's technical, economic, social, cultural,⁴⁵⁷ and
31 environmental characteristics;

⁴⁵² Housekeeping.

⁴⁵³ 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.

⁴⁵⁴ "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.

⁴⁵⁵ Clarifies that the proposed action could be either a program or a project.

⁴⁵⁶ "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.

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

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

- 1 (4) Use of **public state or county**⁴⁵⁸ funds or lands for the action;
- 2 (5) Phasing and timing of **the**⁴⁵⁹ 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**⁴⁶⁰
- 9 alternatives ~~which that~~ could attain the objectives of the action ~~regardless of cost, in~~
- 10 ~~sufficient detail to explain why they were rejected~~⁴⁶¹ ~~and,~~⁴⁶² ~~for alternatives that were~~
- 11 ~~eliminated from detailed study, a~~ **briefly discussion of the reasons for eliminating**
- 12 ~~them~~⁴⁶³.⁴⁶⁴ The section shall include a rigorous exploration and objective evaluation of
- 13 the environmental impacts of all such alternative actions.⁴⁶⁵ 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**⁴⁶⁶. 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**⁴⁶⁷.
- 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**

⁴⁵⁸ **Aligns language with section 11-200-12.**

⁴⁵⁹ **Housekeeping.**

⁴⁶⁰ 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.

⁴⁶¹ 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.

⁴⁶² **Housekeeping.**

⁴⁶³ ~~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.~~

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

⁴⁶⁵ 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.

⁴⁶⁶ **Clarifies that the effects, costs, and risks are related to the action.**

⁴⁶⁷ **Clarifies that alternative locations should be included for both programs and projects.**

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

- 1 **alternatives in detail.**⁴⁶⁸ 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**⁴⁶⁹ project site (including natural or human-made resources of
9 historic, **cultural,**⁴⁷⁰ archaeological, or aesthetic significance); specific reference to
10 related **programs or**⁴⁷¹ 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**⁴⁷² action, ~~and determine any~~⁴⁷³
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 EIS⁴⁷⁴.
19
- 20 (h) The draft EIS shall include a statement description⁴⁷⁵ of the relationship of the proposed
21 action to land use and resource⁴⁷⁶ 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 resource⁴⁷⁷ plans, policies, and
24 controls, if any, for the area affected shall be included. Where a conflict or inconsistency
25 exists, the ~~statement~~ draft EIS⁴⁷⁸ 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.

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

⁴⁶⁹ **Clarifies that both programs and projects are referred to.**

⁴⁷⁰ Adds "cultural" in line with Act 50 (2000).

⁴⁷¹ **Clarifies that both programs and projects in the regional shall be considered.**

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

⁴⁷³ Housekeeping.

⁴⁷⁴ Housekeeping.

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

⁴⁷⁶ Includes natural resource plans such as water management plans.

⁴⁷⁷ Includes natural resource plans such as water management plans.

⁴⁷⁸ Clarifies that this applies to draft EISs.

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Environmental Council

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

- 1
2 (i) The draft EIS shall include ~~a statement~~ an analysis⁴⁷⁹ 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.~~⁴⁸⁰, ~~which~~ This analysis⁴⁸¹ 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~~⁴⁸². The interrelationships and cumulative
7 environmental impacts of the proposed action and other related projects actions⁴⁸³ shall
8 be discussed in the draft EIS. ~~It~~⁴⁸⁴ ~~should be realized~~ The draft EIS should recognize⁴⁸⁵
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 be⁴⁸⁶ 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 impacts⁴⁸⁷ 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

⁴⁷⁹ 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.

⁴⁸⁰ Clarifies that this sentence applies to both projects and programs.

⁴⁸¹ Stylistic change to increase readability.

⁴⁸² Housekeeping.

⁴⁸³ Clarifies that both projects and programs should be considered.

⁴⁸⁴ Housekeeping. (v0.1 omitted strikethrough)

⁴⁸⁵ Housekeeping.

⁴⁸⁶ Housekeeping.

⁴⁸⁷ Clarifies what the data should be about.

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Environmental Council

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

- 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.⁴⁸⁸
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 those⁴⁸⁹found 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,⁴⁹⁰ 342P (Asbestos and Lead), and 344
25 (State Environmental Policy)⁴⁹¹, HRS, ~~shall be included, including and~~⁴⁹² those effects
26 discussed in other actions subsections of this paragraph section⁴⁹³ which that are
27 adverse and unavoidable under the proposed action must be addressed in the draft
28 EIS⁴⁹⁴. 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

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

⁴⁸⁹ Housekeeping.

⁴⁹⁰ Repealed.

⁴⁹¹ Provides titles of each chapter referenced.

⁴⁹² Housekeeping.

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

⁴⁹⁴ Housekeeping. Replaces "shall be included", which was deleted in v0.1.

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Environmental Council

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

- 1 (m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or
2 reduce ~~impact~~ impacts⁴⁹⁵, 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~~⁴⁹⁶, should
10 ~~be~~⁴⁹⁷ specific reference to the timing of each step proposed to be taken in the any⁴⁹⁸
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 issues⁴⁹⁹.
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)⁵⁰⁰ 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.⁵⁰¹ 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 comment⁵⁰² ~~;~~ and a

⁴⁹⁵ Housekeeping.

⁴⁹⁶ Removes redundant language.

⁴⁹⁷ Housekeeping.

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

⁴⁹⁹ Aligns language throughout sentence to reference "issues" rather than "issues" and "problems".

⁵⁰⁰ Introduces subsections to increase clarity.

⁵⁰¹ 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).

⁵⁰² 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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Environmental Council

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

1 (2) A summary of oral⁵⁰³ comments made at any EIS public scoping meetings⁵⁰⁴ that
2 identifies those persons or agencies that provided oral comments.⁵⁰⁵ 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.⁵⁰⁶
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

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

⁵⁰⁴ 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.

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

⁵⁰⁶ 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 **§11-200-18 Content Requirements; Final Environmental**
2 **Impact Statement**

3 The final EIS shall consist of:

- 4 (1) The draft EIS prepared in compliance with section 11-200-17, as⁵⁰⁷ revised to
5 incorporate substantive⁵⁰⁸ comments received during the ~~consultation and~~⁵⁰⁹
6 review processes;
- 7 (2) Reproductions of all ~~letters~~ written comments received ~~containing substantive~~
8 ~~questions, comments, or recommendations and, as applicable, summaries of any~~
9 ~~scoping meetings held during the ~~consultation and~~⁵¹⁰ review processes⁵¹¹;~~
10 provided that if a number of written comments are identical or very similar, one
11 representative copy of identical or very similar comments may be included rather
12 than reproducing each comment;⁵¹²
- 13 (3) A list of persons, organizations, and public agencies commenting on the draft
14 EIS;
- 15 (4) The responses of the ~~applicant or~~ proposing agency or applicant⁵¹³ to each
16 ~~substantive question, comment, or recommendation~~ written comments⁵¹⁴
17 received in the review and consultation processes, provided that if a number of
18 written comments are identical or very similar, the proposing agency or applicant
19 may group the comments and prepare a single standard response for each
20 group. The name of each commentor shall be included with the grouped
21 response;⁵¹⁵ ~~;~~⁵¹⁶

⁵⁰⁷ Connects this section with the previous section content requirements.

⁵⁰⁸ 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.

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

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

⁵¹¹ Aligns language with the EISPN and draft EIS requirements.

⁵¹² 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.

⁵¹³ Place “proposing agency” before “applicant”.

⁵¹⁴ 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.

⁵¹⁵ 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.

⁵¹⁶ Housekeeping.

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

- 1 (5) A written summary of oral comments made at any public hearings⁵¹⁷ identifying
2 those persons or agencies that provided oral comments;⁵¹⁸
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;⁵¹⁹; and
6 (57) The text of the final EIS ~~which shall be~~⁵²⁰ 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)

11
12
13
14

⁵¹⁷ 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.

⁵¹⁸ 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.

⁵¹⁹ 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.

⁵²⁰ Housekeeping.

1 **§11-200-19 Environmental Impact Statement Style**

2
3 (a)⁵²¹ In developing the draft and final⁵²² EIS, preparers⁵²³ proposing agencies and applicants
4 shall make every effort to convey the required information succinctly in a form easily
5 understood, both by members of the public and by public government⁵²⁴ decision-
6 makers, giving attention to the substance of the information conveyed rather than to the
7 particular form, or length, or detail⁵²⁵ of the statement EIS. The scope of the statement
8 EIS may vary with the scope of the proposed action and its impact. Data and analyses in
9 a statement an EIS shall be commensurate with the importance of the impact, and less
10 important material may be summarized, consolidated, or simply referenced. Statements
11 An EIS shall indicate at appropriate points in the text any underlying studies, reports,
12 and other information obtained and considered in preparing the statement EIS, including
13 cost benefit analyses and reports required under other legal authorities.

14
15 (b) The level of detail in an EIS may be more broad for actions for which site-specific
16 impacts are not discernible due to the nature of the action, including but not limited to
17 actions constituted of: (1) a number of separate projects in a given geographic area
18 which, if considered singly, may have minor impacts, but if considered together may
19 have significant impacts; (2) a sequence of projects contemplated by a single agency or
20 applicant; (3) separate projects having generic or common impacts; (4) an entire plan
21 having wide application or restricting the range of future alternative policies or projects,
22 including new significant changes to existing land use plans, development plans, zoning
23 regulations, or agency comprehensive resource management plans; (5) implementation
24 of a single project or multiple projects over a long timeframe; or (6) implementation of a
25 single program or project⁵²⁶ over a large geographic area. An EIS for these types of
26 actions may be broader and more general than an EIS for discrete and site-specific
27 actions and, where necessary, omit evaluating issues that are not yet ready for decision
28 at the planning level. It may be based on conceptual information in some cases and may
29 discuss in general terms the constraints and sequences of events likely to result in any
30 narrowing of future options. It may present and analyze in general terms hypothetical
31 scenarios that are likely to occur. Under section 11-200-13, impacts of individual actions
32 making up the larger action contemplated by the EIS and that are proposed to be carried

521 Adding a new paragraph requires adding paragraph identifiers.

522 Clarifies that this section applies to draft and final EISs.

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

524 Global edit to reduce confusion regarding the meaning of "public".

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

526 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.⁵²⁷

3
4 (c) In preparing any EIS, Care care⁵²⁸ shall be taken to concentrate on important issues and
5 to ensure that the statement EIS⁵²⁹ 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)
10
11
12

⁵²⁷ 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.

⁵²⁸ Stylistic change to provide more clarity.

⁵²⁹ 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)⁵³⁰ draft EIS with the
3 accepting authority, ~~along with a minimum number of copies determined by the~~
4 ~~accepting authority~~⁵³¹. Simultaneously, a minimum number of four copies of⁵³² the draft
5 EIS shall be filed with the office.
6

7 (b) The proposing agency or applicant shall file the original (signed)⁵³³ final EIS with the
8 accepting authority, ~~along with a minimum number of copies determined by the~~
9 ~~accepting authority~~⁵³⁴. Simultaneously, four copies of⁵³⁵ 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.~~⁵³⁶
14

15 ~~(c)~~⁵³⁷ The proposing agency or applicant shall sign and date the original copy of⁵³⁸ 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.⁵³⁹
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

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

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

532 OEQC only needs one copy, not four.

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

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

535 OEQC only needs one copy, not four.

536 Removes the paragraph because the language is unnecessary.

537 Renumbers the paragraph.

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

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

1 **§11-200-21 Distribution⁵⁴⁰**

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.⁵⁴¹ 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 The⁵⁴² proposing agency or applicant shall make copies of⁵⁴³ 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 that⁵⁴⁴ 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.^{545/546}

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**⁵⁴⁷

- 5 (a) Public review shall not substitute for early and open discussion with interested persons
6 and agencies;⁵⁴⁸ concerning the environmental impacts of a proposed action. Review of
7 the draft⁵⁴⁹ 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 that⁵⁵⁰ 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 applicant⁵⁵¹, shall be received or
16 postmarked to the approving agency or accepting authority, within ~~said the~~⁵⁵² forty-five-
17 day comment⁵⁵³ period. Any comments outside of the forty-five day comment period
18 need not be ~~considered or~~ responded to nor considered⁵⁵⁴.
- 19
- 20 (c) The proposing agency or applicant shall respond ~~in writing~~⁵⁵⁵ 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 EIS⁵⁵⁶.
- 27 The response shall endeavor to resolve conflicts, inconsistencies, or concerns.
28 Response letters reproduced in the text of the final EIS⁵⁵⁷ The response shall indicate

⁵⁴⁷ Rephrases title so that it is clearer that the whole section is about draft EISs.

⁵⁴⁸ Housekeeping.

⁵⁴⁹ Clarifies that the document is a draft EIS.

⁵⁵⁰ Housekeeping."

⁵⁵¹ Place "proposing agency" before "applicant".

⁵⁵² Housekeeping.

⁵⁵³ Clarifies that the forty-five days is for the comment period.

⁵⁵⁴ Stylistic change to increase readability.

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

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

⁵⁵⁷ 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**⁵⁵⁸ to mitigate anticipated impacts or objections, etc.). In
4 particular, the issues raised when the **applicant's or** proposing agency's **or applicant's**⁵⁵⁹
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.⁵⁶⁰

13
14 (d) An addendum document⁵⁶¹ to a draft ~~environmental impact statement~~ EIS shall
15 reference the original draft ~~environmental impact statement~~ EIS to which⁵⁶² it attaches
16 ~~to~~⁵⁶³ 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)

20
21
22

⁵⁵⁸ Provides clarity that revisions may be made to a project or a program.

⁵⁵⁹ Place "proposing agency's" before "applicant's".

⁵⁶⁰ 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.

⁵⁶¹ Removes the word document as it is unnecessary.

⁵⁶² Housekeeping.

⁵⁶³ Housekeeping.

1 **§11-200-23 Acceptability**

2 (a) Acceptability of ~~a statement~~ a final EIS⁵⁶⁴ shall be evaluated on the basis of whether the
3 ~~statement~~ final EIS⁵⁶⁵, in its completed form, represents an informational instrument
4 which that fulfills the ~~definition of an EIS~~ intent and provisions of chapter 343, HRS,⁵⁶⁶
5 and adequately discloses and describes all identifiable environmental impacts and
6 satisfactorily responds to review comments.

7
8 (b) A ~~statement~~ final EIS⁵⁶⁷ 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,⁵⁶⁸ 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 appropriately⁵⁶⁹ ~~incorporated in~~ into the statement final EIS⁵⁷⁰, and comments
18 and responses have been appended to the final EIS⁵⁷¹.

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's⁵⁷² 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's⁵⁷³ 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-acceptability⁵⁷⁴ 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

⁵⁶⁴ Clarifies that the document is a final EIS.

⁵⁶⁵ Clarifies that the document is a final EIS.

⁵⁶⁶ Clarifies that the EIS must meet all applicable elements of environmental review.

⁵⁶⁷ Clarifies that the document is a final EIS.

⁵⁶⁸ 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.

⁵⁶⁹ Recognizes that not all comments are incorporated into an EIS.

⁵⁷⁰ Clarifies that the document is a final EIS.

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

⁵⁷² Housekeeping.

⁵⁷³ Housekeeping.

⁵⁷⁴ Housekeeping.

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1 **county**⁵⁷⁵ funds,⁵⁷⁶ the governor or ~~an~~ the governor's⁵⁷⁷ authorized representative shall
2 have final authority to accept the EIS.

3
4 (d)⁵⁷⁸ 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,⁵⁷⁹ 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~~⁵⁸⁰ period requiring an approving
17 agency to determine the acceptability of the final EIS ~~and described in section 343-5(c),~~
18 ~~HRS~~⁵⁸¹. 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~~⁵⁸² 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.~~⁵⁸³ 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^{584, 585} provided that the thirty-day period may, at the
27 request of the applicant, be extended ~~at the request of the applicant~~⁵⁸⁶ for a period not to
28 exceed fifteen days. The request shall be made to the accepting authority in writing.

⁵⁷⁵ Provides clarity that "state and county" applies to both funds and lands.

⁵⁷⁶ Clarifies cases situations where a proposed action has mixed state and county lands or funds or both lands and funds.

⁵⁷⁷ Housekeeping.

⁵⁷⁸ Breaks the paragraph up to enhance readability. Subsequent paragraphs renumbered.

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

⁵⁸⁰ 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.

⁵⁸¹ Unnecessary language.

⁵⁸² Housekeeping.

⁵⁸³ Redundant when read with the following sentence that sets forth a timeline.

⁵⁸⁴ 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.

⁵⁸⁵ Housekeeping.

⁵⁸⁶ Housekeeping.

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1 Upon receipt of an applicant's written⁵⁸⁷ 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 granted⁵⁸⁸ 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 of⁵⁸⁹
7 the statement EIS⁵⁹⁰ 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~~⁵⁹¹ 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, 11-200-21,⁵⁹²
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 EIS⁵⁹³ 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 simultaneously⁵⁹⁴ sending a
22 ~~letter~~ written notification⁵⁹⁵ to the office and to the accepting authority⁵⁹⁶ informing the
23 office of the proposing⁵⁹⁷ 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~~ draft⁵⁹⁸ 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

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.

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1 Subchapter 8 Appeals

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

3 An applicant, within sixty days after a⁵⁹⁹ non-acceptance determination by the approving agency
4 under section 11-200-23⁶⁰⁰ of a statement a final EIS⁶⁰¹ by an agency⁶⁰², may ~~to choose to~~^{603/604}
5 appeal the non-acceptance to the council, which within ~~thirty~~ ^{sixty}⁶⁰⁵ 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 it⁶⁰⁶. 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.⁶⁰⁷ 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.⁶⁰⁸ Pursuing an appeal by council does not
14 abrogate an applicant's option under section 343-7(e), HRS, to bring judicial action.^{609/610}

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

⁵⁹⁹ Housekeeping.

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

⁶⁰¹ Clarifies that the document is a final EIS.

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

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

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

⁶⁰⁵ 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.

⁶⁰⁶ Clarifies the Council's determination.

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

⁶⁰⁸ 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.

⁶⁰⁹ 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.

⁶¹⁰ 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~~⁶¹¹ 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. § sections⁶¹² 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~~ NEPA⁶¹³,
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.~~⁶¹⁴

13
14 (2) Where a federal agency determines that the proposed action is exempt⁶¹⁵ 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.⁶¹⁶

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.⁶¹⁷

26

⁶¹¹ Housekeeping.

⁶¹² Housekeeping.

⁶¹³ Housekeeping.

⁶¹⁴ Housekeeping.

⁶¹⁵ 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.

⁶¹⁶ 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.

⁶¹⁷ 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.

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- 1 (24) The National Environmental Policy Act NEPA⁶¹⁸ requires that draft⁶¹⁹ statements
2 EISs⁶²⁰ 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,⁶²¹ 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^{622/623} 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. 1857.⁶²⁴ The responsible federal
11 agency's supplemental EIS requirements shall apply in the these⁶²⁵ cases in
12 place of this chapter's supplemental EIS requirements.⁶²⁶
13
14 (5)⁶²⁷ 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 NEPA⁶²⁸. The office and state or
17 county⁶²⁹ 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

⁶¹⁸ Housekeeping.

⁶¹⁹ Language is applicable to draft and final.

⁶²⁰ Housekeeping.

⁶²¹ 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.

⁶²² Housekeeping.

⁶²³ Housekeeping.

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

⁶²⁵ Housekeeping.

⁶²⁶ 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.

⁶²⁷ 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.

⁶²⁸ Housekeeping.

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

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 proposed⁶³¹, 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~~ or⁶³² responsible federal agency.

12
13 (47) Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~ this section⁶³³ 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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24

⁶³⁰ 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.

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

⁶³² 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.

⁶³³ 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~~^{634/635}**

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:⁶³⁶~~

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.~~

634 ~~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.~~

635 ~~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.~~

636 ~~Housekeeping.~~

1 **Proposed ~~§11-200-XX Content Requirements; Draft~~**
2 **Programmatic Environmental Impact Statement^{637/638}**

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-level⁶³⁹ 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,⁶⁴⁰ 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 in⁶⁴¹ any narrowing of future options. It may present and analyze in general terms
21 hypothetical scenarios that are likely to occur.
22

⁶³⁷ 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.

⁶³⁸ 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.

⁶³⁹ Uses consistent language to distinguish between project-level EISs and program-level EISs.

⁶⁴⁰ Housekeeping.

⁶⁴¹ Increases readability.

1 Subchapter 10 Supplemental Statements

2 **§11-200-26 Supplemental EIS⁶⁴² 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.⁶⁴³ 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; or⁶⁴⁴
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.⁶⁴⁵
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 probably⁶⁴⁶significant
27 environmental impacts.
28 (4) The information must not have been addressed in the prior EIS, or must have
29 been inadequately addressed.⁶⁴⁷
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,

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

⁶⁴³ Restores original SEIS section language.

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

⁶⁴⁵ Adds a change in knowledge as a potential reason to require a supplemental EIS.

⁶⁴⁶ Housekeeping.

⁶⁴⁷ 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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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 EIS⁶⁴⁸ 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 project⁶⁴⁹ 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~~ EIS⁶⁵⁰ is required. A written
9 summary of this evaluation and the⁶⁵¹ 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~~ an⁶⁵²
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
21
22

⁶⁴⁸ Clarifies in the title that this is about supplemental EISs (to distinguish from regular EISs and programmatic EISs).

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

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

⁶⁵¹ 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.

⁶⁵² Housekeeping.

1 **§11-200-28 Supplemental EIS⁶⁵³ 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

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

1 **§11-200-29 Supplemental EIS⁶⁵⁴ Procedures**

2 The requirements of the thirty-day consultation, ~~file~~ public notice **filing**⁶⁵⁵, 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.

5

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

7

8

9

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

⁶⁵⁵ Stylistic change to increase readability.

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

1 **Proposed §11-200-XX⁶⁵⁶ 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.⁶⁵⁷

33
34
35

⁶⁵⁶ 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.

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

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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