Report of the Environmental Council Permitted Interaction Group

Discussion Points for the Council in Consideration of Written and Oral Comments to the Proposed Revisions to Hawai‘i Administrative Rules Title 11 Department of Health Chapter 200.1 Environmental Impact Statement Rules

Prepared for the October 25, 2018 Environmental Council Meeting

Prepared by the Environmental Council Permitted Interaction Group established on June 12, 2018, with the support of the Office of Environmental Quality Control (OEQC). The 2018 Permitted Interaction Group members are: Ron Terry (Chair), Mary Begier, Stephanie Dunbar-Co, Scott Glenn, Charles Prentiss, Onaona Thoene, and Mahina Tuteur. Deputy Attorney General Edward Bohlen and Susan Hohmann advised the Permitted Interaction Group.

This report documents the Permitted Interaction Group discussion of comments received during public hearings. This report does not represent the opinion of the Environmental Council nor its official responses to comments. The content of this report is for Council discussion to facilitate Council review of the comments.

Background

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

In 2011, the public formally petitioned the Environmental Council (Council) to update HAR Chapter 11-200. The Council initiated consultation with the state and county agencies for recommendations on issues to address language revisions. In 2012, the Council released a preliminary draft revision to HAR Chapter 11-200 (“Version 1”) that incorporated proposed revisions from previous Council efforts and issues raised by agencies and the public.

The Council also distributed an Excel file ("comment matrix") whereby agencies and the public submitted comments. The Council organized the responses into a master comment matrix and tasked the Rules Committee, a committee of the Council, with addressing the feedback and making revisions to the language of the rules. The Rules Committee met regularly in 2012-2014 to revise Version 1. However, due to administrative challenges, including maintaining quorum, the Council was unable to complete its work.

In February 2016, following Governor Ige's appointment of seven members to the Council, the Council resumed its efforts to revise HAR Chapter 11-200. As part of this effort, the Council recognized the extensive outreach and drafting done by the 2012 Council.

Also, in February 2016, the Council established a permitted interaction group ("PIG") to investigate and consider specific language for revisions to HAR Chapter 11-200. The 2016 PIG presented a report with its recommendations to the Council as well as Version 0.1 of the proposed rules at the Council's meeting on July 27, 2017. The Council approved Version 0.1 as the baseline document for further edits to the rules, thus concluding the work of the 2016 PIG. (Refer to Version 1.0 Rationale for additional background information.)

In August 2017, OEQC and the Council began working with a drafting team from the William S. Richardson School of Law to continue drafting language for the revisions to the 1996 Rules. OEQC also set up an online comment platform using CiviComment, allowing for an additional means of commenting on the rules update, as well as a webpage on the OEQC website (http://health.hawaii.gov/oeqc/rules-update/) tracking the rules update schedule, Council meetings on the rules update, and comment deadlines. Those who signed up with OEQC were sent email notifications regarding changes to the schedule and comment deadlines.

From September 5, 2017 through February 20, 2018, Versions 0.2, 0.3 and 0.4 were released to the Council, agencies, and the public for review and comment. Each version of the rules reviewed and incorporated as appropriate comments from Council members, agencies and the public. (Refer to Version 1.0 Rationale for additional information on topical changes that were made to each version and to the OEQC rules update webpage to view the various versions.)

On March 6, 2018, Version 0.4a (which included typographic and other minor corrections to Version 0.4) was presented to the Council for decision making. The Council voted 13-0-0 (with two excused members) to approve Version 0.4a, as amended (the "Proposed Rules"). The Council also voted to approve the Public Notice of Rulemaking, the Rules Rationale, and the Changes from the 1996 Rules documents (the Proposed Rules, Public Notice of Rulemaking, Rules Rationale, and the Changes from the 1996 Rules documents are collectively referred to as the "Rules Package") and voted to recommend that Governor Ige approve the Proposed Rules for formal public hearing. The OEQC submitted the Rules Package to the Small Business Regulatory Review Board (SBRRB) for review. On March 21, 2018, the SBRRB reviewed the Rules Package and voted to recommend that Governor Ige proceed with public hearings for the Proposed Rules.

In March 2018, Governor Ige approved the public hearings for the Proposed Rules. On April 20, 2018, DOH issued the Notice of Public Hearings. During the 30-day comment period on the Proposed Rules, DOH held 9 public hearings on the Proposed Rules across the state from May 21 through May 31, 2018, two each on the islands of Oʻahu, Maui, and Hawaiʻi, and one each on Molokaʻi, Lanaʻi, and Kauaʻi. Oral testimony was taken at each of these meetings, except at the Hawaiʻi AM and Maui AM hearings where there were no speakers. Written comments on the Proposed Rules were also received during the 30-day comment period, which period ended on June 5, 2018.

The Council received 36 written letters and 29 oral comments from 28 speakers on the Proposed Rules from agencies, individuals, and organizations. At its June 12, 2018 meeting, the Council established another permitted interaction group ("2018 PIG") to review and respond to the written and oral comments received at the public hearings and during the 30-day comment period, as well as to prepare a report to the Council on any changes to the Proposed Rules recommended by the 2018 PIG.

2018 PIG Principles

The PIG reviewed and discussed comments within the principles previously established by the Council in drafting the Proposed Rules:

- Be consistent with the intent and language of Hawaiʻi Revised Statutes Chapter 343.
- Align the rules with statute, case law, and practice, wherever feasible, and to be consistent in wording where possible.
- Increase clarity for the process and requirements.
- Be consistent with comments received and edits to the Proposed Rules made in pre-consultation.

2018 PIG Process

The 2018 PIG met over the course of June 2018 through October 2018 to review the written and oral comments received on the Proposed Rules. Written and oral comments were assigned to each member of the 2018 PIG. The members reviewed their assigned comments and drafted discussion points, if any, to each comment. In some cases, the PIG drafted language incorporating comments to facilitate Council discussion of how the comment could be integrated into the Proposed Rules, should the Council decide so.

2018 PIG Report Features

The PIG report should be used in conjunction with the PDF of public comments, titled "Written and Oral Comments on Draft 1.0, HAR 11-200.1", dated October 2, 2018. Pages 1 through 180 of that PDF are the written comments received by the Council during the 30-day public comment period. Pages 181 through 250 are the transcripts from the 9 public hearings on the rules. OEQC hired a transcription company to transcribe the oral comments from the official recording and a backup recording. Due to the wind conditions at the Molokaʻi hearing, the company was unable to transcribe one of the oral comments. OEQC approached another company who was also unable to transcribe the Molokaʻi comment from either recording. Accordingly, the transcription included in the PDF of public comments is an unofficial transcription done by the Chair of the Council.

This Report includes a matrix organized by commenter. There are six columns (from left to right): (1) commenter's name; (2) general topic of the comment; (3) summary of comment; (4) HAR section affected by the comment; (5) 2018 PIG discussion of the comment, which memorializes the discussion of PIG members during its meetings; and (6) indicates whether the PIG added language in this report for the Council to consider.

In order to keep the length of the 2018 PIG report to a minimum, Column 3 includes summaries of the comments made by commenters rather than repeating the comments verbatim. The 2018 PIG used its best efforts to summarize all comments accurately. The PIG recommends that the PIG report be read side-by-side with the PDF of public comments. Please note that the PIG discussion to each comment in Column 5 is based on the comments as they appear in the PDF of public comments -- not the summary of comment in Column 3.

PIG Drafts for Council Consideration

The PIG drafted language incorporating certain comments to facilitate Council discussion of how the comment could be integrated into the Proposed Rules, should the Council decide so. Sections are not reproduced in their entirety. Only enough is reproduced to understand the context of the language.

How to read the revisions:

- The language is reproduced from the document "Version 1.0 Unofficial Ramseyer" and retains all formatting.
- Text in yellow shows PIG recommended edits. Where the Unofficial Ramseyer used pink to show new language, the yellow overwrites it.
- Yellow Underline - PIG proposed new language or language moved from another location.
- ~~Yellow Strikethrough~~ - PIG proposed deleted language or language to be moved to another location.

§ 11-200.1-1 Purpose

(b) [~~[An EIS] **EAs** and **EISs** [is] are meaningless without the conscientious application of the [EIS] environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed **action**.~~] **Agencies** and **applicants** shall ensure that [~~statements~~] **EAs** and **EISs** are prepared at the earliest [~~opportunity in the planning and decision-making process~~] practicable time. This shall assure an early open forum for discussion of adverse **effects** and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed **action** prior to decision-making.

(c) **EAs** and **EISs** are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed **action**. In preparing any [~~document~~] EA or EIS, **proposing agencies** and **applicants** [~~shall~~] are to:

(1) [~~make~~] Make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length[~~, or detail~~] of the [~~statement~~] [~~document~~] EA or EIS;

(2) [~~care shall be taken~~] Take care to concentrate on important issues and to ensure that the document remains an essentially self-contained document,

capable of being understood by the reader without the need for undue cross-reference; and

(3) [~~Conduct~~] Make every effort to conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of **agencies** and the public in the environmental review process.

§ 11-200.1-2 Definitions

As used in this chapter:

"**Acceptance**" means a formal determination [~~of acceptability~~] that the document required to be filed pursuant to chapter 343, HRS, fulfills the [~~definitions and~~] requirements of an **environmental impact statement (EIS)**, [~~adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement~~] as prescribed by section 11-200.1-28. **Acceptance** does not mean that the **action** is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A determination of **acceptance** is required prior to implementing or approving the **action**.

"**Accepting authority**" means, in the case of agencies, the [~~[final] official who, or **agency** that, [determines the acceptability of the EIS document]~~] respective governor or mayor, or their authorized representative, and, in the case of applicants, the agency that initially received and agreed to process the request for an approval, that makes the determination [~~that a final **EIS** is required to be filed, pursuant to chapter 343, HRS, and~~] that the [~~final~~] **EIS** fulfills the [~~definitions and~~] requirements [~~of an **EIS**~~] for **acceptance**.

"**Addendum**" means an attachment to a **draft** [~~environmental assessment~~] **EA** or draft [~~environmental impact statement~~] **EIS**, prepared at the discretion of the **proposing agency**, [~~or~~] **applicant**, accepting authority, or **approving agency**, and distinct from a **supplemental EIS** [~~statement~~], for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the **draft** [~~environmental assessment~~] **EA** or the draft [~~environmental impact statement~~] **EIS** already filed with the **office**.

"**Finding of no significant impact**" or "**FONSI**" means a determination by an **agency** based on an **EA** that an **action** not otherwise exempt will not have a **significant effect** on the **environment** and therefore does not require the preparation of an **EIS**. [~~A **FONSI** is required prior to implementing or approving the **action**.~~]

"**Project**" means a discrete, planned undertaking that [~~has a defined beginning and end time,~~] is site and time specific, [~~and~~] has a specific goal or purpose, and has potential impact to the environment.

"**Program**" means a series of one of more **projects** to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A **program** may include: a number of separate **projects** in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have **significant impacts**; separate **projects** having generic or common **impacts**; an entire plan having wide application or restricting the range of future alternative policies or **actions**, including new significant changes to existing land use plans, development plans, zoning regulations, or **agency** comprehensive resource management plans; implementation [~~of a single **project** or~~] multiple **projects** over a long timeframe; or implementation of a single **project** over a large geographic area.

"**Trigger**" means any use or activity listed in section 343-5(a), HRS, requiring [~~preparation of an environmental assessment~~] environmental review.

Unless defined in this section, elsewhere within this chapter, or in chapter 343, HRS, a **proposing agency** or **approving agency** may use its administrative rules or statutes that they implement to interpret undefined terms.

§ 11-200.1-3 Computation of Time

[~~In computing any period of time prescribed or allowed by this chapter, order of the **council**, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, shall not be included.~~] The time in which any act prescribed or allowed by this chapter, order of the council, or by applicable statute, is computed by excluding the first day and including the last. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which case the last day shall be the next business day.

§ 11-200.1-4 Periodic Bulletin

(a) The **periodic bulletin** shall be issued electronically on the eighth and twenty-third days of each month.

(b) [~~The office shall inform the public through the publication of a periodic bulletin of the following:~~] When filed in accordance with section 11-200.1-5, the **office** shall publish the following in the **periodic bulletin** to inform the public of **actions** undergoing chapter 343, HRS, environmental review and the associated public comment periods provided here or elsewhere by statute:

(1) Determinations that an existing exemption, **FONSI**, or accepted **EIS** satisfies chapter 343, HRS, for a proposed [~~activity~~] action;

(2) **Exemption notices** and lists of actions an agency has determined to be exempt**;**

(3) [~~Notices filed by agencies of the availability of environmental assessments~~] Draft **EAs** and appropriate **addendum** documents for public review and [~~comments~~] thirty-day comment period, including notice of an anticipated **FONSI**;

(4) Final **EAs**, including notice of a **FONSI**, or an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting,** and appropriate **addendum** documents;

(5) Notice of an **EISPN** with thirty-day comment period and notice of **EIS public scoping meeting,** and appropriate **addendum** documents;

(6) [~~Notices filed by **agencies** of~~] Evaluations and determinations that supplemental [~~statements~~] **EISs** are required or not required;

(7) [~~The availability of statements~~] Draft **EISs,** draft **supplemental** [~~statements~~] **EISs,** and appropriate **addendum** documents for public review and forty-five day comment period;

(8) Final **EISs**, final **supplemental EISs,** and appropriate **addendum** documents;

(9) [~~The~~] Notice of **acceptance** or non-acceptance of [~~statements~~] **EISs** and **supplemental EISs**;

(10) Republication of any chapter 343, HRS, notices, documents, or determinations;

(11) Notices of withdrawal of any chapter 343, HRS, notices, documents, or determinations; and

(12) Other notices required by the rules of the **council**.

§ 11-200.1-5 Filing Requirements for Publication and Withdrawal

(a) Anything required to be published in the **bulletin** shall be submitted electronically to the **office** before the close of business four business days prior to the **issue date**, which shall be the issue date deadline.

(b) All submittals to the **office** for publication in the **bulletin** shall be accompanied by a completed informational form [~~which~~] that provides whatever information the **office** needs to properly notify the public. The information requested may include the following: the title of the **action**; the islands affected by the proposed **action**; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including for applicants, the **approval** requiring chapter 343, HRS, environmental review; whether the proposed **action** is an **agency** or an **applicant action**; a citation of the applicable federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses, email addresses, phone numbers and contact persons as applicable of the **accepting authority**, the **proposing agency**, the **approving agency**, the **applicant**, and the consultant; and a brief narrative summary of the proposed **action** [~~which~~] that provides sufficient detail to convey the [~~full~~] impact of the proposed **action** to the public.

§ 11-200.1-7 Identification of Approving Agency and Accepting Authority

(e) The **office** shall not serve as the **accepting authority** for any [~~**proposed**~~] **agency** or **applicant action**.

§ 11-200.1-8 Applicability of Chapter 343, HRS, to Agency Actions

(a) Chapter 343, HRS, environmental review shall be required for any **agency action** that includes one or more **triggers** as identified in section 343-5(a), HRS.

(1) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license[~~s~~], etc.) or entitlement to those lands.

(2) [~~For agency actions, chapter 343, HRS, exempts from applicability~~] Under section 343-5(a), HRS, any feasibility or planning study for possible future programs or projects [~~which~~] that the agency has not approved, adopted, or funded are exempted from chapter 343, HRS, environmental review. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose these in any future [~~assessment~~] **EA** or [~~subsequent statement~~] **EIS**. [~~If [, however,] the planning and feasibility studies involve testing or other actions [which] that may have a significant impact on the environment, [then] an [environmental assessment] **EA** or **EIS** shall be prepared.~~]

[~~(3) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11), HRS, or section 205-4.5(a)(13), HRS, environmental review when required under section 205-5(b), HRS.~~]

§ 11-200.1-9 Applicability of Chapter 343, HRS, to Applicant Actions

(a) Chapter 343, HRS, environmental review shall be required for any **applicant action** that:

(1) Requires one or more [~~agency~~] **approvals** prior to implementation; and

(2) Includes one or more **triggers** identified in section 343-5(a), HRS.

(A) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license[~~s~~], etc.) or entitlement to those lands.

(B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11), HRS, or section 205-4.5(a)(13), HRS, [~~must perform~~] are subject to environmental review [~~only~~] when the respective county [~~required under~~] requires environmental

review under an ordinance adopted pursuant to section 205-5(b), HRS.

§ 11-200.1-10 Multiple or Phased Actions

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

(1) The component **actions** are phases or increments of a larger total [~~undertaking~~] program;

(2) An individual [~~project~~] **action** is a necessary precedent [~~for~~] to a larger [~~project~~] **action**;

(3) An individual [~~project~~] **action** represents a commitment to a larger [~~project~~] **action**; or

(4) The **actions** in question are essentially identical and a single **EA** or [~~statement~~] **EIS** will adequately address the **impacts** of each individual **action** and those of the group of **actions** as a whole.

§ 11-200.1-11 Use of Prior Exemptions, Findings of No Significant Impact, or Accepted Environmental Impact Statements to Satisfy Chapter 343, HRS, for Proposed [~~Activities~~] Actions

(a) Agencies shall not, without considerable pre-examination and comparison, use past determinations, and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to Yes
the use of previous determinations and previously accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered.

(b) When an **agency** is considering whether a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS, for a proposed [~~activity~~] action, the **agency** may determine that additional environmental review is not required because:

(1) The proposed [~~activity~~] action was a component of, or is substantially similar to, an action that received an exemption, **FONSI**, or an accepted

EIS (for example, a **project** that was analyzed in a [~~programmatic~~] program **EIS**);

(2) The proposed [~~activity~~] action is anticipated to have **direct**, **indirect**, and **cumulative effects** similar to those analyzed in a prior exemption, **final EA**, or accepted **EIS**; and

(3) In the case of a **final EA** or an accepted **EIS**, the proposed [~~activity~~] action was analyzed within the range of alternatives.

(c) When an **agency** determines that a prior exemption, **FONSI**, or an accepted **EIS** satisfies chapter 343, HRS, for a proposed [~~activity~~] action, the **agency** may submit a brief written determination explaining its rationale to the **office** for publication pursuant to section 11-200.1-4 and the proposed [~~activity~~] action may proceed without further chapter 343, HRS, environmental review.

(d) When an **agency** determines that the proposed [~~activity~~] action warrants environmental review, the **agency** may submit a brief written determination explaining its rationale to the **office** for publication pursuant to section 11-200.1-4 and the **agency** shall proceed to comply with subchapter 7.

§ 11-200.1-12 Consideration of Previous Determinations and Accepted Statements

[~~(b)~~] A **proposing agency** or **applicant** may incorporate information or analysis from a relevant [~~Previous~~] prior [~~determinations~~] **exemption notice**, **final EA**, [~~and previously accepted statements may be incorporated~~] or accepted **EIS** into an **exemption notice**, **EA**, **EISPN**, or **EIS**, [~~by applicants and **agencies**~~] for a proposed **action** whenever the information or analysis [~~contained therein~~] is pertinent [~~to the decision at hand~~] and has logical relevancy and bearing to the proposed **action** [~~being considered~~] (for example, a **project** that was broadly considered as part of an accepted [~~programmatic~~] program **EIS** may incorporate relevant portions from the accepted [~~programmatic~~] program **EIS** by reference).

§ 11-200.1-13 Significance Criteria

(a) In considering the significance of potential environmental effects, agencies shall consider and evaluate the sum of effects of the proposed action on the quality of the environment[[,] ~~and shall evaluate the overall and cumulative effects of an action~~].

(b) In determining whether an **action** may have a **significant effect** on the **environment**, the **agency** shall consider every phase of a proposed **action**, the expected [~~consequences~~] **impacts**, [~~both **primary** and **secondary**, and the **cumulative** as well as the short-term and long-term **effects** of the **action**~~] and the proposed mitigation measures. In most instances, an **action** shall be determined to have a **significant effect** on the **environment** if it [~~is likely to~~] may:

(1) [~~Involves an irrevocable commitment to loss or destruction of any natural or cultural resource~~] Irrevocably commit a natural, cultural, or historic resource;

(2) [~~Curtails~~] Curtail the range of beneficial uses of the **environment**;

(3) [~~Conflicts~~] Conflict with the [~~state's~~] State's [~~long-term~~] environmental policies or long-term environmental goals [~~and guidelines as expressed in chapter 344, HRS, or other laws,~~] established by law [~~and any revisions thereof and amendments thereto, court decisions, or executive orders~~];

(4) [~~Substantially affects~~] Have a substantial adverse **effect** on the economic welfare, [~~or~~] social welfare, or cultural practices of the community [~~or~~] and State;

(5) [~~Substantially affects~~] Have a substantial adverse **effect** on public health;

(6) [~~Involves~~] Involve adverse **secondary impacts**, such as population changes or **effects** on public facilities;

(7) [~~Involves~~] Involve a substantial degradation of environmental quality;

(8) Is individually limited but cumulatively has [~~considerable~~] substantial adverse **effect** upon the environment or involves a commitment for larger actions;

(9) [~~Substantially affects~~] Have a substantial adverse **effect** on a rare, threatened, or endangered species, or its habitat;

(10) [~~Detrimentally affects~~] Have a substantial adverse **effect** on air or water quality or ambient noise levels;

(11) [~~Affects~~] Have a substantial adverse **effect** on or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;

(12) [~~Substantially affects~~] Have a substantial adverse **effect** on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or

(13) [~~Requires~~] Require substantial energy consumption or emit substantial greenhouse gases.

§ 11-200.1-14 Determination of Level of Environmental Review

(b) For an applicant **action**, within thirty days from the receipt of the **applicant**'s complete request for **approval** to the **approving agency**, through its judgment and experience, an **approving agency** shall assess the significance of the potential **impacts** of the **action**[~~, including the overall **cumulative impact** in light of related past, present, and reasonably foreseeable **actions** in the area affected,~~] to determine the level of environmental review necessary for the **action**.

§ 11-200.1-15 General Types of Actions Eligible for Exemption

(c) The following [~~list represents exempt classes of action~~] general types of **actions** are eligible for exemption:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving [~~negligible or no~~] minor expansion or minor change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the facilities or structures [~~same~~] and installation of new, small, equipment or [~~and~~] facilities and the alteration and modification of the equipment or facilities [~~same~~], including, but not limited to:

(A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed **action** is being considered, if not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty [~~persons~~] individuals or [~~less~~] fewer per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation*;*

(5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities [~~which~~] that do not result in a serious or major disturbance to an environmental resource;

[(6)] Construction or placement of minor structures accessory to existing facilities;

[(7)] Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

([~~8~~]6) Demolition of structures, except those structures [~~located on any historic site as designated in~~] that are listed on [~~or that meet the criteria for listing on~~] the national register or Hawaii [~~register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS~~] Register of Historic Places;

([9]7) Zoning variances except shoreline [~~set-back~~] setback variances; [~~and~~]

([10]8) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions;

([11]9) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond [~~that~~] previously existing uses, and for which the legislature has appropriated or otherwise authorized funding [~~.~~]; and

(10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county **proposing agency** or **approving agency**, that meets the following:

(A) Has the use of state or county lands or funds or is within Waikiki as the sole **triggers** for compliance with chapter 343, HRS;

(B) As proposed conforms with the existing state urban land use classification;

(C) As proposed is consistent with the existing county zoning classification that allows housing; and

(D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as set forth in 11-200.1-13(b)(11).

§ 11-200.1-18 Preparation and Contents of a Draft Environmental Assessment

(a) A **proposing agency** shall, or an **approving agency** shall require an **applicant** to [~~Seek~~] [~~seek~~] conduct early consultation, seeking, at the earliest practicable time, to assess the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed **action** is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals [~~which~~] that the **proposing agency** or **applicant** reasonably believes [~~to~~] may be affected.

(b) [~~The scope of the **draft EA** may vary with the scope of the proposed **action** and its **impact**, taking into consideration whether the **action** is a **project** or a **program**.~~] Data and analyses in a **draft EA** shall be commensurate with the importance of the **impact**, and less important material may be summarized, consolidated, or simply referenced. A **draft EA** shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the **draft EA**, including cost benefit analyses and reports required under other legal authorities.

(c) [~~The level of detail in a **draft EA** may be more broad for **programs** or components of a **program** for which site-specific impacts are not discernible, and shall be more specific for components of the **program** for which site-specific, **project**-level impacts are discernible.~~] A **draft EA** for a **program** may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the **program** may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

(d) A draft **EA** shall contain, but not be limited to, the following information:

(1) Identification of the **applicant** or **proposing agency**;

(2) For **applicant actions**, [~~Identification~~] identification of the **approving agency** [~~, if applicable~~];

(3) List of all required permits and **approvals** (state [~~State~~], federal, and county) [~~required~~] and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;

(4) Identification of **agencies**, citizen groups, and individuals consulted in [~~making~~] preparing the **draft** [~~assessment~~] **EA**;

(5) General description of the **action's** technical, economic, social, cultural, historical, and environmental characteristics;

(6) Summary description of the affected **environment**, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, [~~or~~] United States Geological Survey topographic maps, or State sea level rise exposure maps;

(7) Identification and [~~summary~~] analysis of **impacts** and alternatives considered;

(8) Proposed mitigation measures;

(9) **Proposing Agency** or **approving agency** [~~determination or, for draft environmental assessments only an~~] anticipated determination, including findings and reasons supporting the anticipated **FONSI**, if applicable; and

(10) Written comments, if any, and responses to the comments [~~under~~] received, if any, and made pursuant to the early consultation provisions of [~~sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15,~~] subsection (a) and statutorily prescribed public review periods.

§ 11-200.1-19 Notice of Determination for Draft Environmental Assessments

(b) The proposing **agency** or **approving agency** shall [~~also~~] file [~~such~~] the notice of anticipated [~~determination when applicable~~] FONSI and supporting **draft EA** with the **office** as early as possible in accordance with subchapter 4 after the determination is made pursuant to and in accordance with [~~section 11-200-9~~] this subchapter and the requirements in subsection (c). [~~along with four copies of the supporting environmental assessment. In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency.~~] For **applicant actions**, the **approving agency** shall also send the anticipated **FONSI** to the **applicant**.

§ 11-200.1-20 Public Review and Response Requirements for Draft Environmental Assessments

(b) [~~The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental assessment was published in the periodic bulletin and shall continue for a period of thirty days.~~] Unless mandated otherwise by statute, the period for public review and for submitting written comments shall be thirty days from the date of publication of the **draft EA** in the **bulletin**. Written comments [~~to the proposing agency or approving agency, whichever is applicable, with a copy of the comments to the applicant or proposing agency~~] shall be received by or postmarked to the **proposing agency**, or in the case of applicants, to either the **approving agency** [~~and~~] or **applicant**[~~,~~] within the thirty-day period. Any comments outside of the thirty-day period need not be [~~considered or~~] responded to nor considered in the final **EA**.

(d) **Proposing agencies** and **applicants** shall respond in the **final EA** to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

(1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (e), must be appended in full to the final [~~document~~] EA; or

(2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (e), must either be included with the response or appended in full to the final [~~document~~] EA.

(f) In responding to substantive written comments, **proposing agencies** and **applicants** shall endeavor to resolve conflicts[~~,~~] or inconsistencies in information and address specific environmental[~~, or~~] concerns identified by the commenter[~~. and to provide~~], providing a response that is commensurate with the substantive content of those comments. [~~The response shall indicate changes that have been made to the text of the draft **EA**.~~] The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed **action** to mitigate anticipated **impacts** or objections raised in the comment, or may refute all or part of the comment). In particular, the issues raised when the **proposing agency's** or **applicant's** position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the draft **EA**.

§ 11-200.1-22 Notice of Determination for Final Environmental Assessments

(e) The notice of [~~determination~~] a **FONSI** shall indicate in a concise manner:

(1) Identification of the **applicant** or **proposing agency**;

(2) Identification of the **approving agency** [~~or **accepting authority**~~];

(3) [~~Brief~~] A brief description of the proposed **action**;

(4) [~~Determination~~] The determination;

(5) Reasons supporting the determination; and

(6) [~~Name~~] The name, title, email address, physical address, and phone number of [~~a contact person~~] an individual representative of the **proposing agency** or **applicant** who may be contacted for further information.

§ 11-200.1-23 Consultation Prior to Filing a Draft Environmental Impact Statement

(b) In the preparation of a draft **EIS**, **proposing agencies** and **applicants** shall consult all appropriate **agencies**, [~~noted in section 11-200-10(10), and other~~] including the county agency responsible for implementing the county's general plan for each county in which the proposed **action** is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals [~~as noted in sections 11-200-9 and 11-200-9.1~~] that the [~~proposing agency~~] accepting authority reasonably believes to be affected. To this end, **agencies** and **applicants** shall endeavor to develop a fully acceptable draft **EIS** prior to the time the draft **EIS** is filed with the **office**, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.

(c) Upon publication of [~~a preparation notice~~] an **EISPN** in the **periodic bulletin**, agencies, groups, or individuals shall have a period of thirty days from the initial [~~issue~~] publication date [in which to request to become a consulted party and] to make written comments regarding the environmental **effects** of the proposed **action**. [~~Upon written request by the consulted party and upon good cause shown,~~] With [~~good cause~~] explanation, the **approving agency** or **accepting authority** may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the draft EIS pursuant to section 11-200.1-24. For purposes of the scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

§ 11-200.1-24 Content Requirements; Draft Environmental Impact Statement

(d) The draft **EIS** shall contain a summary sheet [~~which~~] that concisely discusses the following:

(1) Brief description of the **action**;
(2) Significant beneficial and adverse **impacts** [~~(including **cumulative impacts** and **secondary impacts**)~~];
(3) Proposed mitigation measures;
(4) Alternatives considered;
(5) Unresolved issues; [and]

(6) Compatibility with land use plans and policies, and listing of permits or **approvals**[~~.~~]; and

(7) A list of relevant prior [~~documents~~] EAs and EISs [~~for **actions**~~] considered in the analysis of the preparation of the **EIS**.

(g) The draft **EIS** shall contain a [~~project~~] description of the **action** [~~which~~] that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental **impact**:

(1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps, [~~or~~] Floodway Boundary Maps, or State sea level rise exposure area maps, as applicable) and a related regional map;

(2) [~~Statement of objectives~~] Objectives of the proposed **action**;

(3) General description of the **action's** technical, economic, social, cultural, and environmental characteristics;

(4) Use of [~~public~~] state or county funds or lands for the **action**;

(5) Phasing and timing of the **action**;

(6) Summary technical data, diagrams, and other information necessary to [~~permit~~] enable an evaluation of potential environmental **impact** by commenting agencies and the public; and

(7) Historic perspective.

(h) The draft **EIS** shall describe in a separate and distinct section discussion of the alternative of no action as well as reasonable alternatives [~~which~~] that could attain the objectives of the **action** [~~regardless of cost, in sufficient detail to explain why they were rejected~~]. The section shall include a rigorous exploration and objective evaluation of the environmental **impacts** of all such alternative **actions**. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**, costs, and risks of the **action**. Examples of alternatives include:

[~~(1) The alternative of no **action**;~~]

(~~2~~1) Alternatives requiring **actions** of a significantly different nature [~~which~~] that would provide similar benefits with different environmental **impacts**;

(~~3~~2) Alternatives related to different designs or details of the proposed **actions** [~~which~~] that would present different environmental **impacts**; and

[~~(4) The alternative of postponing **action** pending further study; and~~]

(~~5~~3) Alternative locations for the proposed [~~project~~] **action**.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed

action and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail. For any **agency actions**, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the **agency**.

(i) The draft **EIS** shall include a description of the environmental setting, including a description of the **environment** in the vicinity of the **action**, as it exists before commencement of the **action**, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the **action** site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related **actions**, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall **cumulative impacts** of such **actions**. **Proposing agencies** and **applicants** shall also identify, where appropriate, population and growth characteristics of the affected area [~~and~~], any population and growth assumptions used to justify the proposed **action**, and [~~determine~~] any secondary population and growth **impacts** resulting from the proposed **action** and its alternatives. [~~In any event, it~~] It is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted in the draft **EIS**.

(p) The draft **EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce [~~impact~~] **impacts**, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the **action** plan to reduce significant, unavoidable, adverse **impacts** to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. [~~Included~~] The draft **EIS** shall include, where possible [~~and appropriate~~], [~~should be~~] specific reference to the timing of each step proposed to be taken in [~~the~~] any mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure [~~assure~~] that the mitigation measures will in fact be taken in the event the action is implemented.

(r) The draft **EIS** shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the **statement**, and shall disclose the identity of the **persons**, firms, or **agency** preparing the [~~**statement**~~] draft EIS, by contract or other authorization[~~, shall be disclosed~~].

(s) The draft **EIS** shall include a separate and distinct section that contains:

(1) [~~reproductions~~] Reproductions of all [~~substantive~~] written comments [~~and responses made~~] submitted during the [~~consultation process~~] consultation period required in section 11-200.1-23;

(2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. **Proposing agencies** and **applicants** shall respond in the **draft EIS** to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

(A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commenter identified in each applicable topic area. All comments, except those described in paragraph (3), must be appended in full to the final document; or

(B) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in paragraph (3), must either be included with the response, or appended in full to the final document;

(3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(A) The response may be grouped under paragraph (2)(A) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a

distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and

(C) Provided that, if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to paragraph (2);

(4) A summary of **any EIS public scoping meetings**, including a written general summary of the oral comments made, and a representative sample of any handout provided by the proposing agency or applicant related to the **action** provided at the **EIS public scoping meeting(s);**

(5) A list of those **persons** or **agencies** who were consulted and had no comment [~~shall be included in the draft **EIS**~~] in a manner indicating that no comment was provided; and

(6) A representative sample of the **agency** consultation request letter.

§ 11-200.1-25 Public Review Requirements for Draft Environmental Impact Statements

(b) The period for public review and for submitting written comments shall commence [~~as of~~] from the date that notice of availability of the draft **EIS** is initially [~~issued~~] published in the **periodic bulletin** and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments [~~to the [approving agency or]~~ ~~**accepting authority**[, whichever is applicable,] with a copy of the comments to the [applicant or] **proposing agency** or **applicant**,~~] shall be received by or postmarked to the [~~**approving agency** or~~] **accepting authority**, and in the case of applicants to either the accepting authority or the applicant, within [~~said~~] the forty-five-day comment period. Any comments outside of the forty-five day comment period need not be [~~considered or~~] responded to nor considered.

§ 11-200.1-26 Comment Response Requirements for Draft Environmental Impact Statements

(a) In accordance with the content requirements of section 11-200.1-27, [~~The~~] the **proposing agency** or **applicant** shall respond [~~in writing~~] within the **final EIS** to [~~the~~] all substantive written comments received [~~by or postmarked to the approving agency during the forty-five-day review period~~] pursuant to section 11-200.1-25. [~~and incorporate the comments and responses in the final **EIS**~~]. [~~The response to comments shall include:~~] In deciding whether a written comment is substantive, the **proposing agency** or **applicant** shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the

purpose of this chapter and chapter 343, HRS. Written comments deemed by the **proposing agency** or **applicant** as non-substantive and to which no response was provided shall be clearly indicated.

(d) In responding to substantive written comments, **proposing agencies** and **applicants** [~~Responses~~] shall endeavor to resolve conflicts[~~,~~] or inconsistencies in information and address specific environmental[~~, or~~] concerns identified by the commenter, [~~and to provide~~] providing a response that is commensurate with the substantive content of those comments. [~~Response letters reproduced in the text of the final EIS~~] [~~The response shall indicate [verbatim] changes that have been made to the text of the draft **EIS**.~~] The response shall describe the disposition of significant environmental issues raised[~~. (e.g.,~~] (for example, the response may point to revisions to the proposed [~~project~~] **action** to mitigate anticipated **impacts** or objections raised in the comment[~~, etc.~~]). In particular, the issues raised when the [~~applicant's or~~] **proposing agency's** or **applicant's** position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the draft **EIS**.

§ 11-200.1-27 Content Requirements; Final Environmental Impact Statement

(b) The final **EIS** shall consist of:

(1) The draft **EIS** prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the [~~consultation and~~] review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;

[(2)] [~~Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;~~]

[(3)](2) A list of **persons**, organizations, and public **agencies** commenting on the draft **EIS**;

(3) A list of those **persons** or **agencies** who were consulted with in preparing the final **EIS** and those who had no comment shall be included in a manner indicating that no comment was provided;

(4) [~~The responses of the applicant or **proposing agency** to each substantive question, comment, or recommendation received in the review and consultation processes,~~] A written general summary of oral comments made at any EIS public scoping meetings; and

(5) The text of the final **EIS** [~~which shall be~~] written in a format [~~which~~] that allows the reader to easily distinguish changes made to the text of the draft **EIS**.

§ 11-200.1-28 Acceptability

(b) A [~~statement~~] final **EIS** shall be deemed to be an acceptable document by the **accepting authority** [~~or **approving agency**~~] only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the [~~statement~~] **EIS**, from proposal of the **action** to publication of the final **EIS**, have all been completed satisfactorily as specified in this chapter;

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

(3) Comments submitted during the review process have received responses satisfactory to the **accepting authority**, or **approving agency**, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated [~~in~~] into the [~~statement~~] final **EIS**.

(e) For **actions** proposed by **applicants** requiring **approval** from an **agency**, the **applicant** or **accepting authority**, which is the **approving agency**, may request the **office** to make a recommendation regarding the acceptability or non-acceptability of the [~~statement~~] **EIS**. If the **office** decides to make a recommendation, it shall submit the recommendation to the **applicant** and the **approving agency** within the [~~thirty-day~~] period requiring an **approving agency** to determine the acceptability of the final **EIS** [~~and described in section 343-5(c), HRS~~]. Upon **acceptance** or non-acceptance by the **approving agency**, the **agency** shall notify the **applicant** of its determination, and provide specific findings and reasons. The **agency** shall also provide a copy of this determination to the **office** for publication [~~of a notice~~] in the **periodic bulletin**. **Acceptance** of the required **EIS** shall be a condition precedent to **approval** of the request and commencement of the proposed **action**. [~~An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's statement.~~]

(f) The **agency** shall notify the **applicant** and the **office** of the **acceptance** or non-acceptance of the final **EIS** within thirty days of the final **EIS** submission to the **agency**[~~,~~]; provided that the thirty-day period may, at the request of the **applicant**, be extended [~~at the request of the applicant~~] for a period not to exceed fifteen days. The request shall be made to the **accepting authority** in writing. Upon receipt of an **applicant's** written request for an extension of the thirty-day **acceptance** period, the **accepting authority** shall notify the **office** and **applicant** in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the **applicant's** request. An extension of the thirty-day **acceptance** period shall not be [~~allowed~~] granted merely for the convenience of the **accepting authority**. If [~~In the event that~~] the **agency** fails to make a determination of **acceptance** or non-acceptance [~~for~~] of the [~~statement~~] **EIS**

within thirty days of the receipt of the final **EIS**, then the **statement** shall be deemed accepted.

(~~f~~g) A non-accepted **EIS** may be revised by a **proposing agency** or **applicant**. The revision shall take the form of a revised draft **EIS** [~~document~~] which shall fully address the inadequacies of the non-accepted **EIS** and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, **acceptance** or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by [~~sections 11-200-20, 11-200-21, 11-200-22, and 11-200-23~~] subchapters 4 and 10 for an **EIS** submitted for **acceptance**. In addition, the [~~revised draft EIS~~] subsequent revised final **EIS** shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

(~~g~~h) A **proposing agency** or **applicant** may withdraw an **EIS** by simultaneously sending a [~~letter~~] written notification to the **office** and to the **accepting authority** informing the **office** of the **proposing agency's** or **applicant's** withdrawal. Subsequent resubmittal of the **EIS** shall meet all requirements for filing, distribution, publication, review, **acceptance**, and notification as a [~~new~~] draft **EIS**.

§ 11-200.1-31 National Environmental Policy Act Actions: Applicability to Chapter 343, HRS

(4) The [~~National Environmental Policy Act~~] **NEPA** requires that [~~draft statements~~] **EISs** be prepared by the responsible federal [~~agency~~] entity. In the case of **actions** for which an **EIS** pursuant to the **NEPA** has been prepared by the responsible federal entity, the draft and final federal **EIS** may be submitted to comply with this chapter, so long as the federal **EIS** satisfies the **EIS** content requirements of this chapter, including cultural impacts, and is not found to be inadequate under the **NEPA**: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the **NEPA** regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, title 41 United States Code section 7609.

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
John Kirkpatrick	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio	Public meetings are boisterous; unclear evidentiary status of the recordings. Does OEQC plan to review these recordings as part of the process of reviewing a draft, and will OEQC's submittal acceptance process include a decision that the recordings are adequate for the EIS process?	§ 11-200.1-5(e)(5)(E)	Current rules require that all oral comments received at a meeting be treated the same as written comments; i.e., presumably transcribed and responded to. The rules propose for recordings only for the portion of the public scoping meeting designated for receiving oral comments. The entire scoping meeting does not have to be recorded. This is consistent with requirements for other meetings.	
	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio	Can OEQC complete their review in a timely manner? Scoping meetings may generate so much audio. Can the adequacy of recordings be challenged in court?	§ 11-200.1-5(e)(5)(E)	Agencies and applicants are required to ensure that recordings are made of sufficient quality so that comments are audible. OEQC will review to verify that the audio recordings submitted are audible and of standard quality. If parties suspect the recordings are inadequate, they can take appropriate legal action, as they would for any EIS inadequacy. It is to be understood that not every comment a person makes may be audible or intelligible. The applicant or agency must simply record speakers at the public comment section.	
	Acceptability; Comment Response Requirements for EAs and EISs	If a commentator finds that his or her comment was not adequately summarized by the Agency or Applicant in the draft EIS, does that affect the acceptability of the EIS process?	§§ 11-200.1-8, -20, -26	Whether or not an inadequate summary of a comment at the public scoping meeting will affect the acceptability of an EIS will need to be evaluated on a case by case basis. The point of a scoping meeting is to assist the agency or applicant in determining the *scope* of the EIS. Therefore, any determination about the adequacy or acceptability of a *final EIS* based on comments made during *scoping* should be limited to scoping of the EIS.	
	Filing Requirements for Publication and Withdrawal; New Scoping Requirements for Audio of Public Comment Section of Meeting	Will the audio recordings kept by OEQC become part of the public record accessible for review (a) during the draft EIS comment period and (b) afterward?	§ 11-200.1-5(e)(5)(E)	The recordings will become part of the permanent Chapter 343 record for the project. They will be available as audio files on the internet, on a site hosted by OEQC. These files can be listened to on an iPhone, PC or tablet, or at computer at a public library, among other locations. The comment summary section is general, rather than specific, and it is not intended in any way to be a transcription. If a commenter wants to ensure their comment is transcribed exactly, it must be a written comment, not an oral comment.	
	Comment Response Requirements for EAs and EISs	It appears that the Agency or Applicant is not required to provide responses to summarized oral comments.	§§ 11-200.1-5(e)(5)(E); 11-200.1-8, -20, -26	There is no requirement to respond to oral comments.	
Shannon Alivado, General Contractors Association of Hawaii	Definitions; Disclosure of Impacts	Definition of environmental assessment; specifically, the language amending the definition of "environmental assessment", previously defined as a "written evaluation to determine whether an action may have a significant environmental effect" to a written evaluation "that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect." This definition broadens the requirements of an EA. The change in wording implies a legal standard, and requires interpretation to determine what is meant. The GCA requests that the definition of environmental assessment remain the same, or if a change is necessary, that the change narrow the definition to ensure the applicant understands what is expected.	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". It is the PIG's view that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions; Analysis	Is it necessary to use the word “analysis” and is the use of such word exceeding the original intent of the content of an EA and EIS was meant to include? The new proposed language would require draft and final EAs and EISs to include an analysis of impacts and alternatives considered instead of an identification and summary of those impacts and alternatives. “analysis” is very subjective. Suggests deleting the reference to “summary analysis” and allow applicant to “identify” any impacts to the environment.	§ 11-200.1-2	It is the PIG's view that the proposed new language does not impose any greater requirements than what is required under the 1996 Rules. In practice, the existing language requiring "identification and summary" necessarily includes some analysis. The new language simply makes this explicit.	
Fox Mark: The Nature Conservancy	General; General Types of Actions Eligible for Exemption	A statement of appreciation to the Council for thorough approach and opportunity for stakeholders to participate throughout the process. Especially grateful for work done to clarify significance criteria in Subchapter 7 and exemption provisions in Subchapter 8, helping to distinguish actions that benefit the environment.	§§ 11-200.1-13(b), 11-200-1.15, -16, -17	A statement of support for amendments as written, with no suggestions for rewording.	
Ivan Hou: Local 5	General; Standards of Review	EIS rules should provide different guidance and compliance requirements between agency-applicants doing public works or small scale/residential projects vs. large for-profit commercial projects.	General	HRS Chapter 343 does not appear to give the Council authority to have different standards and/or requirements based on the type of project proposed. Chapter 343 and the HAR must be applied if they are triggered. The type of project and level of impact will be determined through the analysis done in an EA and/or EIS if one is required.	
	Language	Some of the draft language injects subjectivity into the process. Objective and quantifiable mechanisms should be used to ensure robust review, avoid ambiguity, and discourage misapplication of discretionary power.	General	General comment only. No specific changes suggested.	
	Supplemental EIS; “Shelf Life”	Suggests that the language in Version 0.2 HAR 11-200-27 the five year timeline regulating when a prior decision/EIS can be used to determine whether a newer supplemental EIS is required), should be re-introduced and included in the new rule. The language was removed after a few public comments raised concerns. Thinks the five year shelf life is objective and quantifiable. The Version 0.2 language was reasonable. Without an objective measure the rule invites dispute over subjective interpretations, especially for controversial projects. The current proposed rule HAR 11-200.1-30 is unclear on whether there is any mechanism or trigger that would bring regulatory attention to the fact an applicant is commencing work on a project that was more than five years old, unless the applicant voluntarily discloses that changes to its approved project may be “substantive”. Too much discretion is given to an applicant to decide what is “substantive”.	§ 11-200.1-30	When the 5 year shelf life concept was introduced during pre-consultation, the Council received many comments opposed to the idea. In response, the Council introduced the Green Sheet concept, which should address these issues without having to reintroduce the 5 year shelf life concept. Hawaii law is clear that time alone does not require an SEIS or further assessment. The Green Sheet allows all factors leaning toward or against additional review to be considered, rather than an arbitrary time limit.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Use of Prior Exemptions, FONSI, or Accepted EIS	Allowing an agency to use a prior exemption, FONSI or accepted EIS to exempt a proposed action from a new HRS 343 review if that action was included as an alternative in a prior Final EA or accepted EIS and met other criteria is problematic, as a study is not a substitute for a complete environmental review. Concerned that the language as written invites a non-agency applicant's proposed action to be exempt if it is found to have "similar" effect as the prior determination or study. This invites bait and switch behavior where less scrutinized alternative actions can become the de-facto proposed action. Recommends that the exemption allowance is removed altogether, or limit the proposed HAR 11-200.1-11 exemption to agency-applicants engaged in public works and applicants proposing small scale residential or commercial projects. Non-agency applicants engaged in large for-profit developments should explicitly not be eligible for a proposed action to be exempt simply because it was once included in the "alternatives" section of a prior study.	§ 11-200.1-11	The intent of the added language is not to allow the use of prior documents that do not fully vet an alternative. If the prior document (exemption, FONSI, EA or EIS) does not meet the requirements of the HAR and HRS Chapter 343 or does not otherwise provide the required analysis, that is taken into account when the agency determines whether or not the prior analysis may be used. If the prior analysis is not sufficient, further review may be needed. This new language allows for the flexibility for an agency to make that determination, instead of simply requiring a new document be prepared when an existing document could be sufficient.	
	Definitions; Program vs. Project	The proposed rule is permissive in allowing "conceptual" analysis when future effects or site-specific impact in a long-term program is "indiscernible". The rule could open the door for applicants to commence with actions that are not properly studied beyond a vague summarization in their initial EA/EIS. For example, if an applicant submitted a Programmatic EIS that contained vague analysis because effects were "indiscernible" at the time, could that applicant later be granted exemption for further EIS review (e.g. as allowed by HAR 11-200.1-30 for supplemental reviews) by claiming new proposed actions were already accepted within that prior vague EIS analysis? Suggests the proposed rules explicitly restrict the use of incomplete or conceptual analysis contained in prior EA/EIS if an applicant is relying on them for exemption for new actions that would themselves otherwise require a new EA/EIS.	§ 11-200.1-13	The Green Sheet mechanism introduced is intended to prevent exactly this type of abuse. If a PEIS does not sufficiently analyze the impacts, a project conceptualized under a PEIS will be required to do a site-specific EA, EIS, or other level of review as determined necessary.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria; Sea Level Rise	Hawai'i is dependent on sandy beaches and tourism, and is greatly affected by the growing side effects of climate change. This rulemaking process is a timely opportunity to address sea level rise through early, thoughtful and strategic development planning. However, rule Version 1.0 mentions sea level rise only once (other rules and statutes notwithstanding). The state should take advantage of this chance to make sea level rise a point of emphasis in an environmental review. Recommends that wherever the rule describes EA/EIS content requirements, a new section is added to specifically address sea level rise and shoreline developments. Commenter provided a series of questions on sea level rise, impacts to sea level rise, and how impacts will be addressed.	§ 11-200.1-13	The Council may provide guidance on these issues through guidance rather than rulemaking. However, the preferred mechanism is for HCCMAC and the agencies who are tasked with regulating sea level rise/climate change to make such rules and/or guidelines. The OEQC can refer to those agencies' guidance in OKC's own guidance. Rulemaking that may conflict with the aforementioned agencies' rules and jurisdiction is something to be cautious of.	
	Consultation Prior to Filing a Draft EIS; Consulted Party	Version 1.0 removes language that allows interested parties to become a “consulted” party on the rationale that all documents and data are now available online. However, one feature of being listed as a “consulted” party was the ability to request copies of documents be sent to the consulted party. This lost feature puts an onerous responsibility on the public to check public notice for new documents and risk missing deadlines if they happen to miss a release. The EIS rule should include a requirement that allows interested parties to join a mailing list or email list to be promptly notified of new submittals related to a proposed action.	§ 11-200.1-23	The Council and OEQC have taken an active effort to move away from paper copies of any documents in an effort to be more environmentally friendly and efficient.	
	General Types of Actions Eligible for Exemption; Exemption Lists; Highway Signage	Version 1.0 allows exemptions and exemption lists for agencies to streamline their ordinary duties, including the “installation of routine signs and markers” (HAR 1-200.1-16). Excessive number of road signs on Hawaii’s roads degrade the aesthetic quality of the state’s natural environment (for example, the numerous “No Parking” and traffic signs along the scenic Ka Iwi Coast road on the east side of Oahu). Suggests benefit of having an EIS mechanism to provide a check on the number of road signs and their impact on view planes.	§§ 11-200.1-15, -16	Because the Council does not have jurisdiction over signage, the PIG does not recommend that any specific rules be made to regulate signage. This likely falls under DOT or County/City & County jurisdiction. Should a signage project trigger review under HRS 343, the cumulative impacts of such a project need to be considered, just as any in any EA or EIS.	
Blaine Miyasato: Airlines Committee of Hawaii	Purpose	Reword: “Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process.” [too aspirational and hard to fulfill] “Make efforts to conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process.”	§ 11-200-1.1 (c) (3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions; EA	Replace the word “evidence” with “facts” in the new definition of EA as a written evaluation “that serves to provide sufficient evidence and analysis”	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.	
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an “analysis” of impacts and alternatives considered instead of an “identification and summary” of those impacts and alternatives. An “analysis” requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	Analysis is a fundamental part of the environmental impact assessment process. “Identification” and “supporting information” imply that a recitation of facts is sufficient to make important decisions concerning impacts and how to mitigate them. The revised language improves the Rules and also that reflects current practice in adequate EAs and EIS.	
	Content Requirements; Draft EIS	“reasonably foreseeable” consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: “the reasonably foreseeable environmental consequences”	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent.	
Debra Norenburg	Exemption Lists	Exemption list should be on the internet.	§ 11-200.1-16	Exemption lists are available on the OEQC web site, as well as many of the agencies' websites: http://oeqc2.doh.hawaii.gov/_layouts/15/start.aspx#/Agency_Exemption_Lists/Forms/AllItems.aspx	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Stuart Coleman: Surfrider	Definitions	Actions should not have to have a beginning and end, or to be planned, to be covered by Chapter 343. Suggests the following (a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof. (2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval. […]	§ 11-200.1-2	The suggested definition for "project" is overly broad and appears to incorporate considerations expressed in the triggers. It would lead to EISs for laws, county general plans (which are specifically excluded by statute), and government policies. The definition for programs in the Proposed Rules appears to address most of the topics raised in the suggested comment.	
	Definitions	A definition of mitigation is needed. NEPA and CEQA have one.	§ 11-200.1-2	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation. The language in Section 24(p) could be reworded into 11-200.1-2 Definitions or taken up the question in a future rulemaking effort.	
	General; Objectivity in Preparation	Why are applicants preparing their own EAs and EISs? Why are they determining what is a substantive comment and how to respond to it? The rules are addressing the applicant to do these things. The rules should ensure that the HRS Chapter 343 environmental review process is fair and objective – that the fox is not guarding the hen house. Agencies must retain oversight and responsibility for ensuring the adequacy of EAs and EISs.	§§ 11-200.1-12, 11- 20.1-14(d), and 11-200.1-20(c),	HRS Chapter 343 prescribes that the agency has responsibility for determining when Chapter 343 applies, what level of review to undertake, and if the law is satisfied at the end of the process. Unlike with NEPA, which provides for an agency to allow an applicant to prepare the document, HRS Chapter 343-5(e) states that the agency requires the applicant to prepare the EA or EIS. This is why the rules address the applicant. The agency is responsible for deciding if the applicant has met the standard for sending the draft EA or EIS out for public comment and issuing a FONSI or acceptance. In turn, agencies are the entities that are the objects of judicial appeal. It is in their interest to ensure that the information is accurate and complete.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	General; Objectivity in Preparation	Proposed Section states "In order that the public can be fully informed and that the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental effects, an EIS shall include responsible opposing views, if any, of significant environmental issues raised by the proposal." With contentious issues, where different parties have opposing views, it's foreseeable that an agency or applicant may deem a differing view to be "irresponsible," but that doesn't mean that the opposing view should not be raised or given valid consideration in the EIS. Similarly, subsection (b) provides that "less important material [in an EIS] may be summarized, consolidated, or simply referenced." Particularly where an applicant is authorized to prepare its own EIS and respond to comments in its own EIS, this presents a concern – as applicants would be able to determine what is more and what is less important, and thereby avoid full and adequate discussion on certain issues.	§ 11-200.1-24(a)	This language has been retained from the original (see 11-200-16 Content Requirements). To ensure that potential court review does not determine that diverse but responsible views were suppressed, agencies and applicants generally greatly err on the side of caution to include discussion of diverse ideas. However, some viewpoints expressed in comments are irrelevant or inappropriate (such as extensive profanity and insults without making a point) and detailed discussion and refutation of such comments is not in the public interest. The Proposed Rules also make clear in section 11-200.1-28 Acceptability that the accepting authority has responsibility to ensure that comments were appropriately identified as substantive, to not just take the applicant's word on it, and consider whether the response was commensurate to the comment. This is already the accepting authority's duty and responsible and the Proposed Rules makes it explicit.	
	General Types of Actions Eligible for Exemption	Many of the proposed revisions will result in vague, potentially broad exemptions. For example, under proposed § 11-200.1-15(c)(1), what will constitute a "minor" expansion or a "minor" change in existing use? {Examples provided in comment, such that we should provide percentages for increases in height, other percentages for increase in area, etc.)	§ 11-200.1-15	The existing and Proposed Rules in general do not specify design thresholds as the focus is on potential for impact. An example of a minor change in use may be from a restaurant to a food bank, which may trigger Chapter 343 because of the involvement of government funds but the current rules do not provide for a means for an exemption. Similarly, context is important. The Council has to ensure the rules are applicable and meaningful across the entire state for all islands and contexts. Adding a fourth story to a three-story building in an urbanized area such as Waikiki may not have much potential for significant impact but could on Molokai. In order to reduce the potential misuse of exemptions, the Council proposes requiring agencies to publish in the periodic bulletin lists of what they have exempted each month so that the public may review them. The existing rules only require agencies to make a record of the exemption and produce it to the public upon request.	
	Supplemental EISs	As is, subsections 11-200.1-30(a) and (b) contain several triggers, which should be re-written more clearly and concisely in one subsection.	§ 11-200.1-30(a) and (b)	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The OEQC can issue better guidance on those sections.	
Lynn McCrory: Pulama Lana'i	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS; Consultation generally	Support greater discussions with the community/agencies on proposed actions; Agree that differentiation between Project and Program helps clearly define the expanse of the proposed action. Concur that multiple look-alike letters with only a signature difference, along with nonsubstantive comments, should not be responded to individually. Agree that State or County should be allowed to consider NEPA FONSIs or CatExs as part of Chapter 343 EA. the public and agencies.	§§ 11-200.1-20, -23, -26	A statement of support for amendments as written, with no suggestions for rewording.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Public Review and Comment Response Requirements for EAs and EISs	Substantive comments should require an individual response	§ 11-200.1-20(d)	This will be required and there will be two options available on how to make the response.	
Donna Wong: Hawaii Thousand Friends	Definitions	Replace "may" with "shall" in the second to last line of the definition of exemption list.	§ 11-200.1-2	An agency is not obligated to have a Part Two of the list.	
	Definitions	Add a definition for "plan".	§ 11-200.1-2	A definition for "plan" is unnecessary. Actions are for "projects" and "programs". While the statute and rules reference plans, the term is used in its everyday meaning, not as a term of art for the environmental review process.	
	Definitions	Add a definition for "minor".	§ 11-200.1-2	"Minor" is used in its everyday sense. The context of its use in the rules explains what may be considered minor.	
	Filing Requirements for Publication and Withdrawal	Mention the purpose and location of the Hawaii Documents Center. Most people are unaware of it.	§ 11-200.1-5	The OEQC guidebook and website can assist with the purpose and location of the Hawaii Documents Center.	
	General Types of Actions Eligible for Exemption	Include examples of what are considered minor expansion or change in use, otherwise the public is unaware of the extent of work that can be done.	§ 11-200.1-15	OEQC guidance can describe examples of what is considered minor. During the rulemaking process, examples discussed included a state building leased to an applicant changing the use of the building from retail store to food bank. Technically this is a change in use requiring minor changes and could be eligible for an exemption under the proposed rules.	
	General Types of Actions Eligible for Exemption	Affordable housing is needed but an exemption is dangerous and it would be negligent to exempt housing developments without considering the impacts to the surrounding community, such as traffic, public parks. Add conditions for not being located near streams, endangered species, prone to flooding or a flood zone, or area that is vulnerable to sea level rise.	§ 11-200.1-15	The proposed paragraph (10)(D) captures these recommended additions by the language "does not require sitting in an environmentally sensitive area". This makes explicit the general requirement that an exemption is inapplicable when a sensitive environment is involved. The language could be clearer with a cross-reference to the significance criteria.	Yes
	Exemption Lists	Restore the word "shall" instead of the change to "may" in the first line.	§ 11-200.1-16	Not all agencies have exemption lists, hence the change to "may". Any agency is able to make an exemption determination under the rules without having an exemption list. Such exemption notices, as well as ones made by agencies with exemption lists, are addressed in -16(d) and section 11-200.1-17.	
	Preparation and Contents of a Draft Environmental Assessment	Add historical after cultural in the summary description of (d)(5)	§ 11-200.1-18	Consider adding to mirror changes made in the significance criteria.	Yes
	Preparation and Contents of a Draft Environmental Assessment	Add archaeological site maps and maps showing locations of endangered and/or threatened flora and fauna and their habitat.	§ 11-200.1-18	These maps are captured in the existing items (6) and (7) without need to be expressly stated.	
	General; Drafting style	Use numbers instead of spelling out number(s).	§ 11-200.1-20	The Hawaii Legislative Reference Bureau (LRB) Hawaii Legislative Drafting Manual principles call for spelling out numbers in this situation.	
	Acceptability	The paragraph is too long. Break it up at "The agency shall notify the applicant and the office..."	§ 11-200.1-28	This enhances readability.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Susan Strom: Individual	Purpose	Wonders why word "detail" in (c)(1) was omitted.	§ 11-200.1-1(c)(1)	Taking out the word "detail" is consistent with the Council's goal of ensuring that proposing agencies and applicants focus on substance over form.	
	Purpose	Proposes replacing "take care" with "take every measure."	§ 11-200.1-1(c)(2)	Language has been modified to be grammatically correct and increase readability. It can be assumed that proposing agencies and applicants would take every measure to concentrate on the important issues.	
	Definitions	Asking for evaluation of the definition of "discretionary consent".	§ 11-200.1-2	The rules have been revised to combine the definitions of "discretionary consent" and "ministerial consent" and ensure the definition of "discretionary consent" is consistent with both chapter 343 and the 1996 rules language.	
	Definitions	Concerned that definition of "EIS preparation notice" is too onerous and that it gives too much discretion to the agency to decide whether a proposed action may have a significant impact.	§ 11-200.1-2	This definition was updated to incorporate the direct-to-EIS route pursuant to section 343-5(e). This section only allows an agency to use its judgment and experience to determine whether an agency or applicant may begin with an EISPN, so an applicant must consult with an agency first to receive this authorization.	
	Definitions	Asking why the definition of "environmental impact" definition has been stricken.	§ 11-200.1-2	The definition of "environmental impact" was deleted because it was unnecessary - both "impact" and "environment" were already included as defined terms.	
	Definitions	Concerned that "exemption list" definition is onerous and gives increased powers to the agency.	§ 11-200.1-2	This definition has been changed to reflect the updates to the exemption process, recognizing that an exemption notice may be prepared for both agency and applicant actions.	
	Definitions	Points out that "program" definition combines a series of projects, and seems to be concerned that this can include multiple projects with ambiguous timeframes over a wide geographical area.	§ 11-200.1-2	The definition of program was added to distinguish between projects and programs, and to provide guidance after the Hawaii Supreme Court's decision in Umberger v. DLNR, 403 P.3d 277 (2017). The Proposed Rules have attempted to weave in the concept of programmatic environmental review, which is most appropriate for evaluating the impacts of a wide range of individual projects, implementation over a long timeframe, or implementation across a wide geographic area.	
	Definitions	Concerned that the last paragraph in this section, which says that a proposing or approving agency may use its admin rules or statutes to interpret undefined terms, gives agencies free license to act on any undefined terms not included in this section.	§ 11-200.1-2	This is the recognized standard for statutory interpretation, and does not give agencies free reign to make up definitions on a whim, as agencies must look to their administrative rules or statutes first.	
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (b) has been amended to remove the requirement to inform the public prior to the action and that the Periodic Bulletin informs the public of actions/decisions after they have already been made.	§ 11-200.1-4(b)	PIG does not see this as an issue, as the Periodic Bulletin informs the public of "actions undergoing Chapter 343," which includes projects/programs under environmental review before decision-making has commenced, as well as "associated public comment periods."	
	Filing and Publication in the Periodic Bulletin	Concerned that language about notices of the "availability of EAs" has been removed	§ 11-200.1-4(b)(3)	Language has been modified to be grammatically correct and increase readability. The Periodic Bulletin includes links to Draft and Final EAs.	

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	Filing and Publication in the Periodic Bulletin	Implies that only those addenda deemed appropriate by the Office will be in the Periodic Bulletin. Public comments on addenda are limited to 30-day comment periods.	§ 11-200.1-4(b)(3)	Addenda are rarely used in the process but the Proposed Rules retain them as an option for agencies and applicants to share with the public corrections to "clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft EA or draft EIS already filed with the office." On occasion, the entity wishing to publish an addendum may include new or supplemental information that is not appropriate to be published in an addendum, in which case OEQC notifies the entity and requests that they remove the material before publishing. Comment periods for addendum match the comment period for their related document; e.g., 30 days for an addendum to an EA and 45 days for an addendum to an EIS.	
	Filing and Publication in the Periodic Bulletin	Concerned that the determination whether supplemental EISs are required or not rests with the agency.	§ 11-200.1-4(b)(6)	It is correct that the agency makes the determination of whether or not supplemental EISs are required.	
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (d) gives OEQC the power to publish other notices, contingent upon space or time.	§ 11-200.1-4(d)	This is existing language in the EIS rules with only the addition of time, as the proposed rules shorten the time between the submittal deadline and publication. OEQC publishes other information of interest and relevance to the public upon request or its own volition.	
	Filing and Publication in the Periodic Bulletin	Concerned that subsection (a) gives agencies the ability to file notices last minute and allows little time for public intervention.	§ 11-200.1-5(a)	The submission deadline has been decreased from 8 to 4 days because the OEQC no longer needs the extra time to prepare the bulletin. Further, the time for public intervention is not at this stage, the bulletin is published to inform the public of actions undergoing environmental review, as well as the associated public comment periods.	
	Identification of Approving Agency or Accepting Authority	Points out that subsection (a) allows for an authorized representative of the Governor as an accepting authority	§ 11.200.1-7(a)	The language is a grammatical clarification.	
	Identification of Approving Agency or Accepting Authority	Same with an authorized representative of the Mayor	§ 11.200.1-7(a)	The language is a grammatical clarification.	
	Identification of Approving Agency or Accepting Authority	Concerned that subsection (b) creates a conflict of interest because the approving agency is also the accepting authority	§ 11.200.1-7(b)	This is about clarifying that with respect to EISs, the approving agency is also called the accepting authority. This is only relevant to applicants, not other agencies so the agency issuing the permit to an applicant is also the one evaluating the EIS for acceptance. Subsection (c) also provides guidance to agencies on how to select the most appropriate accepting authority, including a list of considerations. Hopefully this addresses the need for transparency and the commenter's concern regarding cronyism.	
	Applicability of Chapter 343 to Agency Actions	Suggests looking to HRS 205-5(b) for exemptions and requirements regarding actions involving agricultural tourism	§ 11.200.1-8(a)(3)	That addition aligns the rules with the statute (HRS 343-5(a)(1)), which says that actions involving agricultural tourism under HRS 205-2(d)(11) or 205-4.5(a)(13) must do environmental review only when required under HRS 205-5(b)	
	Applicability of Chapter 343 to Agency Actions	Concerned that (a)(2)(b) loosens the requirement involving agricultural tourism	§ 11-200.1-9(a)(2)(b)	This section does not loosen any requirements, but explicitly includes an exception for agricultural tourism as provided under HRS 343-5(a)(1) and Chapter 205, which allows the counties to require an EA for any agricultural tourism use and activity in certain circumstances.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Applicability of Chapter 343 to Agency Actions	Concerned that subsection (b) creates avenues to avoid the environmental review process	§ 11-200.1-9(b)	This section recognizes that an applicant action may require multiple approvals and should be considered as part of the whole action and not create discrete actions. Subsection (b) makes clear that when a primary action that does not require discretionary consent and that involves a secondary action that is ancillary, the secondary action shall be exempt from environmental review, provided that no further discretionary approvals are required.	
	Multiple or Phased Actions	Concerned that "project" is replaced with "action"	§ 11-200.1-10(1)	Throughout the Proposed Rules, "action" has replaced "project" and definitions of "program" and "project" were added to provide guidance after Umberger.	
	Multiple or Phased Actions	Concerned that requiring a single EA/EIS of related actions creates potential gaps in environmental protection	§ 11-200.1-10(1)	By clarifying the scope of an action, this section is intended to reduce the potential for segmentation.	
	Use of Prior Exemptions, FONSI, or Accepted EISs	Proposes that this section is stricken or re-drafted to involve more outside participation.	§ 11-200.1-11	This section clarifies how and when an agency may determine that a prior exemption, final EA or accepted EIS satisfies chapter 343. The proposed rule intends to create a consistent process and provide agencies with direction on what to consider when determining if a proposed activity is covered under a prior exemption, final EA, or accepted EIS.	
	Determination of Significance	General comment that amendments in this section allow agencies and applicants to "piggyback" on prior determinations to avoid environmental review.	§ 11-200.1-11	The existing 1996 Rules allowed for use of prior determinations and accepted EISs to satisfy HRS Chapter 343 requirements. The Proposed Rule continues to allow this use and clarifies how and when a prior determination or document may be used.	
	Significance Criteria	Concerned that the term "substantial" as used in subsection (b) to refer to "adverse effects" is overly vague and needs to be clarified.	§ 11-200.1-13(b)	The Proposed Rules retain the word "substantial" from the 1996 Rules. Combining "substantial" and "adverse" is meant to set a standard that is higher than just having an effect and emphasizes that the focus is on negative effects rather than positive ones. Specifying a "loss ratio" (i.e. losing over 100 endangered birds) as the commenter suggests would be overly burdensome given that every action undergoing environmental review is different.	
	Determination of Level of Environmental Review	Concerned that this section allows agencies to prepare EAs and EISs in-house.	§ 11-200.1-14	Acknowledged, however the rules cannot require agencies to hire outside consultants.	
	General Types of Actions Eligible for Exemption	Subsection (a) removes the requirement that agencies obtain the advice of outside agencies or individuals with expertise as to the propriety of the exemption.	§ 11-200.1-15(a)	11-200.1-17(b) retains the requirement that agencies obtain the advice of outside agencies or experts when drafting an exemption notice. Taking that language out of 11-200.1-15 was for housekeeping purposes.	
	General Types of Actions Eligible for Exemption	Subsection (c) is expanded to allow for "minor" expansions and changes as eligible for exemption.	§ 11-200.1-15(c)	"Negligible" has been replaced with "minor" and "or no" before "expansion or change" has been removed because activities that are "negligible" and require "no expansion" and "no change" are now captured in the de minimis category and should be reflected in part one of an agency's exemption list.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Exemption Lists	Subsection (b) gives an agency the ability to exempt a specific activity if it has a minimal impact.	§ 11-200.1-16	The rules revise the exemption list to consist of 2 parts, the first being those types of actions the agency considered to be de minimis, including routine operations and maintenance, ongoing administrative activities and other similar items. These activities are presumed to not require documentation (i.e. an exemption notice) or consultation. Many of these items already exist on agency exemption lists.	
	Exemption Notices	Concerned with absence of definition for “negligibly” in subsection (a).	§ 11-200.1-17	There is no need to define this term.	
	Exemption Notices	Restates what subsection (b) does.	§ 11-200.1-17	Does not comment on the Proposed Rules.	
	Exemption Notices	Restates what subsection (c) does.	§ 11-200.1-17	Does not comment on the Proposed Rules.	
	Preparation and Contents of a Draft EA	Restates what subsection (a) does.	§ 11-200.1-18(a)	Does not comment on the Proposed Rules.	
	Notice of Determination for Draft EAs	Restates what subsection (b) does.	§ 11-200.1-19(b)	Does not comment on the Proposed Rules.	
	Public Review and Response Requirements for Draft EAs	Notes that any comments outside of the 30-day comment period will not be considered in the Final EA.	§ 11-200.1-20(b)	No specific comments or suggestions for revisions.	
	Public Review and Response Requirements for Draft EAs	Notes that subsection (c) is amended to provide that the proposing agency or applicant may deem whether comments are substantive vs. non-substantive in deciding whether a response is needed.	§ 11-200.1-20(c)	This section incorporates language from the comment response requirements for EISs in section 11-200.1-26 providing guidance on how to discern substantive from non-substantive comments. By differentiating between these types of comments and allowing for grouping of comment responses, the proposed rules intend to modernize and simplify the environmental review process. The widespread availability of electronic documents to commenters and stakeholders relieves the necessity of sending individual written responses but still ensures that commenters receive notice that their comment has been received, considered, and responded to.	
	Notice of Determination for Final EAs	Restates what subsection (a) does.	§ 11-200.1-22(a)	Does not comment on the Proposed Rules.	
	Notice of Determination for Final EAs	Commenter believes that the requirement to file notice of a FONSI or EISPN has been deleted.	§ 11-200.1-22(b)	The requirement to file the notice with the office in accordance with subchapter 4 is retained in 11-200.1-22(a)(3). Subsections (b) and (c) were revised to clean up the language and streamline.	
	Consultation Prior to Filing a Draft EIS; Content Requirements	General comments about the preparation of an EIS and the 30-day comment period for an EISPN.	§§ 11-200.1-23, -24	No specific comments or suggestions for revisions.	
	Content Requirements; Draft EIS	Concerned about language removed in subsection (b)	§ 11-200.1-24(b)	This language was edited to bring it in line with NEPA language, and provides that the scope and specificity within an EIS will be commensurate with the scope of the action and the degree of specificity to which impacts are discernable at the time of preparation.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Content Requirements; Draft EIS	Thinks subsection (c) allows for the avoidance of issues/impacts which are not yet discernable.	§ 11-200.1-24(c)	Same as above. 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 and project specificity.	
	Content Requirements; Draft EIS	Concerned that subsection (n) deleted that "Resources" also means the "natural and cultural resources committed to loss or destruction by the action."	§ 11-200.1-24(n)	Not an issue because subsections (i) and (j) explicitly include "cultural" resources as part of the impacts to be analyzed in line with Act 50.	
	Content Requirements; Draft EIS	Suggests amending subsection (o) to include "culturally sensitive and/or relevant sites" when addressing probable adverse environmental effects	§ 11-200.1-24(o)	Not an issue because this section lists laws and guidelines that the draft EIS must address adverse effects on. In addition, any laws relevant to the significance criteria that required preparation of the EIS, including culturally sensitive areas, should be addressed.	
	Comment Response Requirements for Draft EISs	Restates what subsection (a) does.	§ 11-200.1-26(a)	No specific comments or suggestions for revisions.	
	Content Requirements: Final EIS	Concerned that subsection (a) amends the requirement for a final EIS to discuss all "relevant and feasible" consequences to all "reasonably foreseeable" consequences	§ 11-200.1-27(a)	This language was changed to align with NEPA language. There is more case law and federal guidance to assist in interpretation and application to various circumstances.	
	Acceptability	Suggests that the rules have been amended to give the Governor final authority to accept an EIS when it involves state and county lands or funds, overriding local authority to do so.	§ 11-200.1-28(c)	The Governor has this authority per HRS Chapter 343 and is in the 1996 Rules. The language has been revised slightly for clarity.	
	Acceptability	States that subsection (e) identifies the accepting authority and approving agency as one and the same	§ 11-200.1-28(e)	The language is to clarify that in the instance of an applicant EIS, the approving agency is the accepting authority.	
	National Environmental Policy Act	Concerned that subsection (2), in allowing federal exemption to be considered in the state or county agency determination, could have dire consequences for reserve lands.	§ 11-200.1-31(2)	Unclear as to how the consideration of a federal categorical exclusion would have dire consequences for reserve lands. The proposed rule says the exemption can be considered, not that it will be controlling.	
	National Environmental Policy Act; Use of Prior Determinations	Concerned that subsection (3) shifts compliance from federal to state and county and that NEPA is ambiguous	§ 11-200.1-31(3)	Same as above. The proposed rule says the federal FONSI may be considered, not that it is dispositive of any state or county determination.	
	Retroactivity	General comments about potential consequences of the retroactivity section.	§ 11-200.1-32	No specific comments or suggestions for revisions.	
	Retroactivity	Subsection (c) - asks how exemption lists should be considered or reviewed before the 7 year time period?	§ 11-200.1-32	The rule is clear that for those exemption lists that have received concurrence under the old rules, the agency must revise its list and obtain concurrence after 7 years.	
Anne Walton	Definitions	Just want to make it clear that "acceptance" only means the EIS complies with 343, HRS, it does not mean the action is approved or can be implemented. A determination of acceptance is required prior a prerequisite to implementing or approving the action, but does not necessarily ensure the action will be approved.	§ 11-200.1-2	The Proposed Rules language expresses the concepts raised in the comment.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	The “accepting authority” and “approving authority” should be one in the same. As such, it would probably be much easier to just pick one term and not use them interchangeably. Also, if the “accepting authority” is proposing the action an accepting the EIS, that is a clear conflict of interest. “Accepting authority” will not be an official from or an agency that is proposing the action for which a determination on the need for an EIS is being requested; nor can an official from or an agency that is proposing an action make the final determination if an EIS fulfills the definition and requirements of an EIS.	§ 11-200.1-2	"Accepting authority" and "approving agency" are only the same entity in one specific context: an applicant action undergoing an EIS. In the case of agencies, the state or county agency makes the determination that an EIS is required and then that respective agency's political leader (governor or mayor) is the accepting authority for the EIS. In the case of applicants, the approving agency makes the decision that an EIS is required and also serves as the approving agency.	
	Definitions	The approving agency should be just that, and not creating addendums to the EA or DEIS as that may pose a conflict of interest. "Addendum" means an attachment to a draft [environmental assessment] EA or draft [environmental impact statement] EIS, prepared at the discretion of the proposing agency, [or] applicant, or approving agency, and distinct from a supplemental EIS [statement], for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft [environmental assessment] EA or the draft..."	§ 11-200.1-2	An addendum is defined as being an attachment to only a draft EA or draft EIS. In the case of an EA, the rules require that the proposing agency or approving agency file the draft EA with the OEQC for publication. Only agencies can ask OEQC to publish EAs because the EA is accompanied by an anticipated FONSI in the case of a Draft EA. In the case of EISs, applicants are required by statute to prepare the document and the applicant submits it to the OEQC for publication and simultaneously to the accepting authority. The accepting authority is not formally involved with the request to OEQC to publish the draft EIS so would not have a role in preparing an addendum and filing it with the OEQC.	
	Definitions	"Accepting authority” definition follows the one recommended above in #2 "Approval" means a discretionary ministerial consent required from an accepting authority agency prior to [actual] implementation of an action. [Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.]	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by HRS Chapter 343. Chapter 343 defines "approval" and "discretionary consent" and the Proposed Rules must be consistent with statutory definitions. HRS Section 343-2 defines "approval" as a "discretionary consent" and defines "discretionary consent" as a "consent, sanction, or recommendation...for which judgment and free will may be exercised..."	
	Definitions	"Accepting authority” definition follows the one recommended above in #2 "Approving agency" means an agency that issues an approval prior to [actual] implementation of an applicant action and is functionally the same as or synonymous with the accepting authority.	§ 11-200.1-2	"Accepting authority" and "approving agency" are not functionally the same in all instances so defining them as such would not be consistent with HRS Chapter 343.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	Discretionary consent should not be an option as it is just that and could lead to some unjustifiable decision making. There needs to be a basis for consent. “Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency accepting authority upon a given set of facts, as prescribed by law without the use of judgment or discretion.	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by HRS Chapter 343. Chapter 343 defines "discretionary consent" and the Proposed Rules must be consistent with statutory definitions. HRS Section 343-2 defines "discretionary consent" as a "consent, sanction, or recommendation...for which judgment and free will may be exercised..."	
	Definitions	Add “accepting agency’s ministerial consent”. "EIS preparation notice[,]", [or]“EISPN”, or "preparation notice” means a determination [based on an environmental assessment that the subject] that an action may have a significant effect on the environment and, therefore, will require the preparation of an [environmental impact statement], EIS, based on either an EA or agency’s accepting authority’s ministerial consent judgment and experience that the proposed action may have a significant effect on the environment.	§ 11-200.1-2	This comment is not consistent with the definitions and process as prescribed by HRS Chapter 343. An EIS preparation notice is determined to be required by the proposing agency for state or county actions and by the approving agency for applicant actions and the decision to proceed to an EIS directly is not related to a ministerial consent.	
	Definitions	Delete proposing agency from "Exemption notice" means a [brief notice kept on file by the proposing agency, in the case of a [public action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project] notice produced in accordance with subchapter 8 for an action that a proposing agency or approving agency on behalf of the applicant determines to be exempt from preparation of an EA.	§ 11-200.1-2	HRS Chapter 343 authorizes agencies to issue exemptions for their own actions when they do not have the potential for significant impact and meet other criteria as set by the Council. Agencies may also issue exemption notices on behalf of applicants.	
	Identification of Approving Agency or Accepting Authority	See point #2 above about “approving” and “accepting authority”. If they are one in the same, they need to be stated as such in the definitions. Also, the “approving agency” should not be the proposing agency. (2)(A) "Discretionary consent" means an action as defined in section 343-2; or an approval from a decision making authority in an agency, which approval is subject to a public hearing.	§ 11-200.1-7	The approving agency and accepting authority are not the same in all cases. However, they are synonyms in the case of applicant EISs, which is why the Proposed Rules identifies the situation as such. The terminology is a product of HRS Chapter 343 and any confusion from the terms must be addressed in the statute.	
	Applicability of Chapter 343, HRS; Definitions	Delete item 11-200.1-9(b)(2)(A)	§ 11-200.1-9	This language is directly from HRS section 343-5.5 and the definition of "discretionary consent" is specific to this subsection.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Use of Prior Determinations	As is, this leaves open too much opportunity for sliding a proposed action through the system based on another approved action and without adequate due process. When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed activity, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11- 200.1-4 and the proposed activity may proceed without further chapter 343, HRS, environmental review and approval by the approving agency.	§ 11-200.1-11	The existing process already allows for agencies to identify whether something falls under an existing action that has completed environmental review. The use of the word "activity" in the Proposed Rules may be overly broad and need to be rewritten. The determination of prior environmental review coverage is done by both proposing agencies and approving agencies.	
	Determination of Significance	Suggest putting this piece back into the mix per the above comment #8: [(c)] [Agencies shall not, without considerable pre-examination and comparison, use past determinations, and previous statement to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted statements. Further, when previous determinations and previous statements are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered.]	§ 11-200.1-12(c)	The language was deleted because the previous section addresses the use of prior determinations. Moving it to offer more direction to agencies in using prior determinations may be beneficial.	Yes
	Significance Criteria	Not sure this proposed change makes grammatical sense: (1) [Involves an irrevocable commitment to loss, harm or destruction of any natural or cultural resource] Irrevocably commit a natural, cultural, or historic resource;	§ 11-200.1-13	The preceding line of subsection (b) must be read in conjunction with the list in paragraphs (1)-(13) below.	
	Significance Criteria	“Substantial adverse effect” is not defined in the definitions section, yet is used widely throughout the “Significance Criteria” section. Seems like we need a definition.	§ 11-200.1-13	These terms are meant to be read in their everyday meaning and therefore the Council did not propose defining them.	
	Determination of Level of Environmental Review	Remove “proposing agency” throughout this section.	§ 11-200.1-14	Per HRS Chapter 343, the proposing agency is the agency that determines whether HRS Chapter 343 applies and what level of environmental review to undertake.	
	General Types of Actions Eligible for Exemption	Go back to the original language as it is clearer and stronger: (a)[Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.] Some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.	§ 11-200.15(a)	The concepts expressed in the 1996 language are expressed more succinctly in the proposed language or are expressed in subsections or sections 11-200.1-16 or 11-200.1-17.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Preparation and Contents of a Draft Environmental Assessment	Remove "agency". (9) Agency or a Approving agency [determination or, for draft environmental assessments only an] anticipated determination, including findings and reasons supporting the anticipated FONSI, if applicable; and	§ 11-200.1-18	The language inadvertently omitted "Proposing" before agency. Considering add "proposing" before "agency".	
	Notice of Determination for Final Environmental Assessments	Remove “proposing agency”. : (b)[Negative declaration] 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 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].	§ 11-200.1-19(b)	Per HRS Chapter 343, the proposing agency is the agency that determines whether HRS Chapter 343 applies and what level of environmental review to undertake, including whether to issue a FONSI.	
	Notice of Determination for Final Environmental Assessments	Remove “proposing agency” and retain the last clause. : (c)[Environmental impact statement preparation notice] 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 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].	§ 11-200.1-22(c)	Last clause was deleted and consolidated into the filing section.	
	Notice of Determination for Final Environmental Assessments	Please retain this section: [(d)][When an agency withdraws a determination pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.]	§ 11-200.1-22(d)	This paragraph was deleted and consolidated into the filing section.	
David Arakawa: Land Use Research Foundation	General	Some EIS challenges are used as delay tactics. A common complaint is that project opponents use the EIS rules and technicalities to bring legal challenges and lawsuits to delay or stop projects, and new rules provide more litigation opportunities. This fact is not sufficiently addressed in the proposed rules or rationale.	n/a	Legal challenges to exemptions, EAs and EISs, and deadlines to those challenges, are set forth by HRS Chapter 343. The proposed rules are not intended to create new litigation points that are not authorized by statute.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	General	Some of the new requirements are not consistent with the purpose, intent and process of Chapter 343 and EIS Rules. The purpose of the environmental review process is to create informational documents and allow public participation which disclose to decisionmakers the significant and cumulative effects of a proposed action on the environment, economic and social welfare and cultural practices; mitigative measure to minimize such effects; alternatives to the action and effects; and includes satisfactorily responses to comments received during the review of the EIS. The EIS is not a permit or approval, it is a preliminary step in the discretionary approval process which also include various other opportunities for review of environmental issues, alternatives, public comment and responses by the applicant and/or agencies.	n/a	No response required – general comment only.	
	General	Unnecessary, duplicative and/or gratuitous changes. The majority of the current EIS rules work (no lawsuits); over 90% of the EIS' are "accepted;" the subject matter of some of the proposed changes are already addressed in the existing EIS law or rules; and the rationale for certain proposed changes are based on questionable "comments,' which should not justify a rule change;	n/a	No response required – general comment only.	
	General	New rule changes which include vague, subjective, unenforceable or unnecessary requirements will result in conflicting interpretations, more uncertainty, needless confusion and unnecessary litigation;	n/a	No response required – general comment only.	
	General	Unintended negative consequences. These legal challenges result in increased costs and delays for needed infrastructure and housing projects;	n/a	No response required – general comment only.	
	General	Unfair, one-sided and biased against agencies and applicants. Some of the proposed EIS rule changes do not address all relevant concerns in a fair and equitable manner.	n/a	No response required – general comment only.	
	Purpose	(c) In preparing any document, proposing agencies and applicants shall: (3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process. It is impossible to impose an aspirational "spirit" requirement with vague and subjective terms. This proposed revision requires "consultation" that is "mutual, open and direct, two-way communication, in good faith," to secure the "meaningful" participation of agencies and the public in the environmental review process."	§ 11-200.1-1(c)(3)	The rule as written is consistent with the purpose set forth in HRS § 343-1.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Purpose	Additional requirements are not consistent with the EIS law: Chapter 343 and the relevant case law do not require adherence to a "spirit."	§ 11-200.1-1	No response required – general comment only.	
	Purpose	Unnecessary, duplicative and/or gratuitous change: No EIS has be rejected (not accepted) or litigated on the basis of failure to have the appropriate "spirit."	§ 11-200.1-1	The language in this subsection (b) exists in the current 1996 Rules. The language in subsection (c) is meant to be aspirational and indicate how to go through the environmental review process.	Yes
	Purpose	Conflicting interpretations and needless confusion will occur, due to new terms which are vague and subjective: "mutual, open and direct, two-way communication, in good faith, and meaningful participation."	§ 11-200.1-1(c)(3)	PIG discussed possible redrafting of c(3)	
	Purpose	Unintended negative consequences: An unreturned, or delayed response to a text, phone call or email by the applicant or an opponent could violate this section. This section could also be violated and the EIS process could be challenged if a project opponent neglects, or refuses to consult in a "mutual, open and direct, two-way communication, in good faith," or refuses to engage in "meaningful participation."	§ 11-200.1-1	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	
	Purpose	Will result in unnecessary litigation: Project opponents could bring legal challenges and lawsuits claiming a violation of this section.	§ 11-200.1-1	The Purpose section is not intended to provide means to sue or be sued.	
	Purpose	Unfair, one-sided and biased against proposing agencies and applicants: The proposed "spirit" requirements for proposing agencies or applicants, can result in lawsuits against the proposing agencies and applicants, but not against any project opponents or others who do not comply with the mandated "spirit."	§ 11-200.1-1	It is intended as direction to the agencies, applicants, and the courts.	
	Purpose	> While aspirational, and a worthy goal, this vague, subjective and unenforceable "spirit" requirements should be DELETED.	§ 11-200.1-1	It is intended as direction to the agencies, applicants, and the courts.	
	Definitions	Definitions - Environmental Assessment (p. 4) The proposed revision would change the definition of "environmental assessment" from a written evaluation "to determine whether an action may have a significant environmental effect," to a written evaluation "that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect."	§ 11-200.1-2	This language is intended to show that there must be enough information in the EA for a determination to be made by the accepting authority about whether or not there is "significant environmental effect". PIG discussed that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer.	
	Definitions	Unnecessary, duplicative and/or gratuitous changes. LURF understands that there is no major problem of EAs being rejected for "insufficiency," or failure to satisfy the requirements of Chapter 343 or the EIS Rules. Assuming that to be true, this proposed new definition of environmental assessment is unnecessary.	§ 11-200.1-2	See comment above.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	The proposed new “sufficient evidence” requirement is inconsistent with the current EIS law. The Chapter 343 does not require the presentation of “sufficient evidence.” The current definitions in Chapter 343 are working, so there is no need to add more subjective wording. Chapter 343 already describes an EIS as “an informational document...which discloses the environmental effects of a proposed action...” Chapter 343 already defines and EA as a “written evaluation to determine whether an action may have a significant effect.” “Sufficient evidence” is not a defined term in Chapter 343, or in the EIS Rules, this it is subjective and may be interpreted several different ways “Evidence” is a legal term used in litigation; submittal and acceptance of evidence requires certain specific legal requirements that are not required of EAs or Chapter 343. The “sufficiency” of an EA or EIS is a question of law (not a requirement for the preparation of an Environmental Assessment).	§ 11-200.1-2	See comment above.	
	Definitions	Conflicting interpretations and needless confusion will result from the proposed new requirement of “sufficient evidence,” which is a vague, subjective, undefined requirement which must be determined by a court of law. Given the term “sufficient evidence,” the preparers of EAs are likely to exercise more caution, and prepare even more lengthy EAs, with non-relevant information. Unnecessary litigation by project opponents will result from vague and subjective terms and conflicting interpretations of “sufficient evidence”; and Unintended negative consequences of litigation: Delay and increased costs for projects which could provide necessary infrastructure, housing, and other projects that will benefit the public. This vague, subjective and undefined requirement should be DELETED. The current rules and definitions are sufficient.	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	General Types of Actions Eligible for Exemption	[8](6) Demolition of structures, except those structures [located on any historic site as designated in] that are listed on, or that meet the criteria of listing on the national register or Hawaii [register as provided for in the National Historic Preservation act of 1966, Public Law 89 665, 16 U.S.C. §470, as amended, or chapter 6E, HRS] Register of Historic Places; This proposed revision would prohibit an exemption for the demolition of any structure built before 1968, based on a mere claim that the structure "meets the criteria" for listing on the national register or Hawaii Register of Historic Places ("Hawaii Register"). They are not consistent with the National Historic Preservation Act and the current EIS rules. The existing rule is sufficient and the proposed language may be outside the jurisdiction of the Council. This proposed language would create conflicting interpretations and needless confusion.	§ 11-200.1-15	The only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional to conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes
	New Requirement: Scoping Meeting and Audio Recording	(d) At the discretion of the proposing agency or an applicant, a] No fewer than one EIS public scoping meeting [to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth] addressing the scope of the draft EIS [may] shall be held on the island(s) most affected by the proposed action, within the public review and comment period in subsection [(b)] (c) [, provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d)]. The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded.	§ 11-200.1-23	Not a comment – summary of proposed rule.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	New Requirement: Scoping Meeting and Audio Recording	The new requirement of public scoping meetings and audio recordings are inconsistent with Chapter 343. Chapter 343, already requires numerous opportunities for substantial public review and comment of environmental documents; already requires responses to the comments by agencies/applicants; and the formal determination of "acceptance" of an EIS already requires that it "adequately describes identifiable environmental impacts and satisfactorily responds to comments received during the review of the statement." Chapter 343 does not require a public scoping meeting or audio recordings. Unjustified and unnecessary changes and requirements: While LURF supports oral comments at public scoping meetings, there is no justification or facts that the lack of a public scoping meeting or lack of audio recordings have resulted in "non-acceptance" of, or a court finding "lack of sufficiency" of an EIS. In fact, the comments from scoping meetings are advisory only, and should not result in lawsuits that would overturn an EIS which has been lawfully "accepted." Unnecessary litigation: Even though the comments at public scoping meetings are recommendations only, project opponents could bring lawsuits claiming a violation of any technicality relating to scoping meetings, oral comments and audio recordings.	§ 11-200.1-23	The intent is for audio recordings to be only for portions of the public scoping meeting that are dedicated to oral comments (one person at a time). OEQC will maintain the oral comments. The rules are also clear that oral comments do not need to be responded to – only that a summary be provided in the draft EIS. Perhaps more detailed changes to explain the process and what happens with audio recordings (or treat this in guidance).	
Leo Asuncion; Office of Planning	Purpose	Introduce the acronyms "EA" and "EIS" in paragraph a: The purpose of this chapter is to provide agencies and persons with procedures, specifications [of] regarding the contents of environmental assessments (EAs) and environmental impact statements (EISs), and criteria and definitions of statewide application.	§ 11.200.1-1(a)	The Proposed Rules introduce the acronym with the definition of the term in section 11-200.1-2. The acronym for HRS is used in section 11-200.1-1 because it is the first introduction of it and it is not defined in section 11-200.1-2.	
	Purpose	Wanting more straightforward language and positive sentiment, suggests removing: [An EIS] EAs and EISs [is] are meaningless without the conscientious application of the [EIS] environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.	§ 11.200.1-1(b)	This language is existing language from the 1996 rules that originally was in the EIS sections of the rules. The Council believes this language is important to retain and make clear that these considerations apply throughout the environmental review process, so intentionally moved it to the front purpose section. Perhaps makes sense to move the sentence from subsection (b) to be the lead in sentence for subsection (c).	Yes
	Accepting Authority	Suggests amendment to the definition of "accepting authority" : "Accepting authority" means the [final] [official who] governor or the mayor, or their authorized representatives, or agency that, [determines the acceptability of the EIS document] makes the determination that a final EIS is required to be filed, pursuant to chapter 343, HRS, and that the final EIS fulfills the definitions and requirements of an EIS.	§ 11-200.1-2	The official who makes the acceptance determination is the governor or mayor for the respective agency. Adding agency without a clarifier that it is in relation to applicant actions may cause confusion.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	Suggests amending the definition of "EIS preparation notice" : "EIS preparation notice[,]", [or] “EISPN”, or "preparation notice” means a determination [based on an environmental assessment that the subject] based on an EA or approving agency's determination that that an action may have a significant effect on the environment and, therefore, will require the preparation of an [environmental impact statement] EIS., based on either an EA or an agency’s judgment and experience that the proposed action may have a significant effect on the environment.	§ 11-200.1-2	The draft language explicitly incorporates statutory into the definition.	
	Definitions	Suggests amending the definition of "Discretionary consent" by also including the definition of "discretionary consent" found in § 343-5.5, HRS which references public hearing as a distinguishing factor, as some judgment and free will is called for in almost all permit decisions: “Discretionary consent” means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Discretionary consent involves an approval from a decision-making authority in an agency that is subject to a public hearing. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law without the use of judgment or discretion.	§ 11-200.1-2	The language in 343-5.5 is specific to that section. The Legislature intentionally did not add that language to section 343-2 so that it applied to the entire statute. Adding it into the rules to be applied throughout the process would be inappropriately narrowing the possible range of discretionary consents as contemplated by the Legislature.	
	Definitions	Suggests the definition of "program" could be interpreted too broadly and could encompass many agency plans not currently subject to environmental reviews. Recommends, at minimum, excluding agency capital improvement program and transportation improvement program plans linked to agency budgetary processes. Projects mentioned in these plans will subsequently undergo environmental review when their scope is more clearly defined. It may also be worthwhile to directly link "program" to "programmatic EA or EIS " to clarify the reference in the definition.	§ 11-200.1-2	HRS Chapter 343 requires undertaking environmental review at the earliest practicable time for projects and programs. The current standing law defining a "program" is in *Umberger v. DLNR* , which defines it as "a plan or system under which action may be taken toward a goal". The decision also emphasized the broad ambit of environmental review. The Council's proposed language seeks to make the definition of "program" more operable while acknowledging the decision and intent of the State Supreme Court.	
	Definitions	Suggests amending the definition of "trigger" : "Trigger" means any use or activity listed in section 343-5(a), HRS, requiring preparation of an [environmental assessment] EA.	§ 11-200.1-2	Acknowledged. While HRS section 343-5(a) states that listed items require an EA, the broader meaning is that the list triggers environmental review (along with an approval in the case of applicants), which could then be followed by an exemption, EA, or EIS.	Yes
	Computation of Time	The first sentence is not clear and is hard to understand. Suggests referring to the language from HRS 1-29 Computation of time for amendments.	§ 11-200.1-3	The proposed language was based on HAR Chapter 11-201. The language in HRS 1-29 is clearer and as statutory language carries greater legal weight.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Identification of Approving Agency or Accepting Authority	Suggests amendment as follows: If an action involves state and county lands, state and county funds, or both state and county lands and funds, the governor or the governor's authorized representative shall have the authority as to determine whether to accept the EIS.	§ 11-200.1-7(a)	Wording preference.	
	Identification of Approving Agency or Accepting Authority	Suggests: The office shall not serve as the accepting authority for any [~~proposed~~] agency or applicant action.	§ 11-200.1-7(e)	"Proposed" is unnecessary here as the statutory intent is that the OEQC not be an accepting authority.	Yes
	Applicability of Chapter 343, HRS, to Agency Action; applicability to agricultural tourism	Suggests subsection (3) should be deleted because it is unlikely that any agency will be conducting a project of this specific nature; unless someone is trying to use public tourism funds for agricultural tourism-related activities/programs. But any agency action is likely to trigger an environmental review by the primary triggers of public funds or lands.	§ 11-200.1-8	The statutory wording is difficult to understand because of the number of citations to other statutes. The Council intended to help clarify it. In the case of agencies, the more general trigger of use of state or county lands or funds is likely to apply even in when this also applies.	Yes
	Applicability of Chapter 343, HRS agency actions; emergency actions	Emergency actions undertaken by a proposing agency during a governor-declared state of emergency may face unforeseen delays due to issues such as: obtaining financing and adhering to procurement law, which may not allow for an activity to have "substantially commenced" within sixty days of the emergency proclamation. OEQC and the Environmental Council should evaluate if the 60-day limit for project commencement is feasible for these types of agency actions.	§ 11-200.1-8	If financing and procurement law apply during an emergency, then so should environmental review. An emergency requires immediate action. Installing a temporary bridge falls under an emergency, replacing a damaged bridge with a newly designed, permanent bridge is an exercise that should undertake environmental review. The Governor has authority to reauthorize emergency proclamations, under which the emergency action would continue, such with the recent housing crisis and lava.	
	Applicability of Chapter 343, HRS, to Agency Actions; applicability to agricultural tourism	Suggests: Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11), HRS, or section 205-4.5(a)(13), HRS [must perform] are subject to environmental review [only] when the respective county [required under] requires an environmental review under an ordinance adopted pursuant to section 205-5(b), HRS.	§ 11-200.1-9	The statutory wording is difficult to understand because of the number of citations to other statutes. The Council intended to help clarify it.	Yes
	Determination of Significance; Consideration of Previous Determinations and Accepted Statements	Suggests moving § 11-200.1-12 Consideration of Previous Determinations and Accepted Statements to § 11-200.1-11 Use of Prior Exemptions, Findings of No Significant Impact, or Accepted Environmental Impact Statements to Satisfy Chapter 343, HRS, for Proposed Activities, and deleting § 11-200.1-11(c), which is not an appropriate content under§ 11-200.1-11. Except for EISPN, it is not necessary for an agency to submit a written determination explaining its rationale to the OEQC for public notice when the agency determines that a proposed activity warrants an environmental review.	§ 11-200.1-12 / § 11-200.1-11	Section 11-200.1-11 is for examining whether a prior EA or EIS covers a proposed action. The language in section 11-200.1-12 is for agencies to incorporate by reference material from existing documents into an action that is not covered by a prior determination. For subsection (c), the language is "may" not "shall" as the Council intends to promote this as a means to improve public notification. It is up to the agency to decide whether the agency wishes to publish with the OEQC. It is unclear why the Office of Planning finds this to be "inappropriate content."	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Consideration of Previous Determinations and Accepted Statements	Please see page 4-17 of the Hawaii Administrative Rules Drafting Manual, Third Edition § 00-4-10 Examples for appropriate formatting. Suggests: (b) A proposing agency or applicant may incorporate information or analysis from a relevant [Previous] prior [determinations] exemption notice, final EA, [and previously accepted statements may be incorporated] or accepted EIS into an exemption notice, EA, EISPN, or EIS, [by applicants and agencies] for a proposed action whenever the information or analysis [contained therein] is pertinent [to the decision at hand] and has logical relevancy and bearing to the proposed action [being considered] for example, a project that was broadly considered as part of an accepted programmatic EIS may incorporate relevant portions from the accepted programmatic EIS by reference).	§ 11-200.1-12	Formatting will be addressed in the final version and receive review by the Attorney General and Legislative Reference Bureau.	
	Use of Prior Determinations	Please see page 4-17 of the Hawaii Administrative Rules Drafting Manual, Third Edition § 00-4-10 Examples for appropriate formatting. Suggests: (b) (c) When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed activity, the agency [may] shall submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the proposed activity may proceed without further chapter 343, HRS, environmental review. (c) When an agency determines that the proposed activity warrants environmental review, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11 200.1 4 and the agency shall proceed to comply with subchapter 7.	§ 11-200.1-11	Formatting will be addressed in the final version and receive review by the Attorney General and Legislative Reference Bureau.	
	Definitions	Suggests adding the definition of "sea level rise exposure area"	§ 11-200.1-2	While this is a new technical term, other technical terms used in conjunction with this are not defined, such as tsunami zone or flood plain.	
	Use of Prior Determinations	Office of Planning supports the proposed addition to Subchapter 6, § 11-200.1-11. This has potential applicability for affordable housing developments which may benefit from this amendment/addition.	§ 11-200.1-11	Acknowledged.	
	General Types of Actions Eligible for Exemption	Office of Planning supports the proposed amendments to Subchapter 8 - Exempt Actions, Lists, and Notice Requirements. Specifically, amendments to § 11-200.1-15(c)(6), § 11-20.1-15(c)(9), and the addition of § 11-200.1-15(c)(10).	§ 11-200.1-15(c)(6), § 11-20.1-15(c)(9), § 11-200.1-IS(c)(10)	Support is acknowledged. The PIG discussed revisions to item (c)(6) demolition of structures to address issues and complications raised by other commenters.	Yes
	Preparation and Contents of a Draft EA	Suggests deleting first sentence of (b) because this description will not provide a meaningful way to direct the preparation of a draft EA.	§ 11-200.1-18	The language directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.	Yes
	Preparation and Contents of a Draft EA	Suggests deleting first sentence of (c) because this description will not provide a meaningful way to direct the preparation of a draft EA.	§ 11-200.1-18	The language directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Preparation and Contents of a Draft EA	Suggests amending item (9) by replacing "FONSI" with "determination" Agency or approving agency [determination or, for draft environmental assessments only an] anticipated determination, such as FONSI, if applicable, (including] and the findings and reasons supporting the anticipated [FONSI] determination [, if applicable]; and	§ 11-200.1-18	A draft EA is only done when anticipating a FONSI, as expressed in HRS section 343-5, so that it the appropriate term (note that a Final EA could result in a FONSI or an EISPN so "determination" is more appropriate there).	
	Notice of Determination for Draft EAs	Pages 26-27, under § 11-200.1-19 Notice of Determination for Draft Environmental Assessments, except under § 11-200.1-19(a), all terms referencing "FONSI" should be changed to "determination". Otherwise, a draft EA will direct exclusively to the determination of "FONSI" without "EISPN" for a final EA, which conflicts with § 11-200.1-22 Notice of Determination for Final Environmental Assessments.	§ 11-200.1-19	A draft EA is only done when anticipating a FONSI, so that it the appropriate term (note that a FEA could result in a FONSI or an EISPN so "determination" is more appropriate there	
	Notice of Determination for Final EAs	For the notice of a FONSI that will not be proceeded further to a EIS, suggests deleting the term "accepting authority" from (e)(2) as follows: (2) Identification of the approving agency [or accepting authority];	§ 11-200.1-22	This makes sense as the term "accepting authority" is relevant when EISs are being undertaken and a FONSI is a determination that no EIS is needed.	Yes
	Consultation Prior to Filing a Draft EIS	Page 32, suggest changing the subjective term "With good cause" to an objective term "With explanations".	§ 11-200.1-23(c)	"With good cause" is subjective.	Yes
	Preparation and Contents of a Draft EA	Suggest deleting the first sentence (b) to eliminate descriptions that will not provide a meaningful way to direct the preparation of a draft EIS.	§ 11-200.1-18	The language directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.	Yes
	Preparation and Contents of a Draft EA	Suggest deleting the first sentence of (c) to eliminate descriptions that will not provide a meaningful way to direct the preparation of a draft EIS.	§ 11-200.1-18	The language directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.	Yes
	Content Requirements; Draft EIS	Suggests amending: (6) Summary technical data, diagrams, and other information necessary to [permit] [enable] allow an evaluation of potential environmental impact by commenting agencies and the public; and	§ 11-200.1-24 (g)(6)	Simplified the grammar.	Yes
	Content Requirements; Draft EIS	Suggests: "For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail" into "For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of discuss the reasons for not studying why those alternatives were not studied in detail.	§ 11-200.1-24 (h)	Items (1) and (4) do not appear to be examples that could obtain the objectives of the action. The no action alternative is the bedrock of impact analysis. The Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508) for implementing the National Environmental Policy Act of 1969 (NEPA) state that NEPA analyses shall “include the alternative of no action” (40 CFR 1502.14). The no action alternative is something that should always be in an EA or EIS as it is an analysis of the current situation and how it is projected to continue.	Yes
	Content Requirements; Draft EIS	Suggests the rules should provide a definition for "natural or cultural resources" as written in the amended text "natural or cultural resources plans, policies, and controls for the affected area" or provide clarification of the subject term.	§ 11-200.1-24 (j)	The council is not defining the terms.	
	Content Requirements; Draft EIS	Office of Planning supports the proposed amendments to § 11-200.1-24(0) and§ 11-200.1-24(p).	§ 11-200.1-24	Acknowledged.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Content Requirements; Final EIS	Suggest changing § 11-200.1-27 (b)(3) to read as follows: (3) A list of persons, organizations, and public agencies who were consulted with in preparing the final EIS and those who had no comments shall be included in a manner indicating that no comment was provided;	§ 11-200.1-27 (b)(3)	PIG discussed possible change.	Yes
	Content Requirements; Final EIS	Suggest amending the subsection (4), to add reference to cultural impacts to read as follows: In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal entity, the draft and final federal EIS may be submitted to comply with this chapter, so long as the federal EIS satisfies the EIS content requirements of this chapter, including cultural impacts, and is not found to be inadequate under the NEPA: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, title 41 United States Code section 7609."	§ 11-200.1-31(4)	PIG discussed possible change.	Yes
Randy Cabral: Hawaii Farm Bureau	Applicability of Chapter 343 to Applicant Actions	Wastewater systems as it applies to ag operations	§ 11-200-9(b)	PIG discussed leaving list as is out of fear of ag operations causing confusion. Possibly add language to better explain HRS 343-5(a)(9)(A) trigger as it applies to non-domestic wastewater units for ag ops. Possibly change?	
Livit Callentine	Content Requirements; Draft EIS	Appreciate expanded guidance on alternatives. Concern for use of word "reasonable." Suggests adding language from NEPA 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."	§ 11-200.1-24	The 1996 Rules use very similar language.	
Karlynn Fukuda: Munekiya Hiraga	General Types of Actions Eligible for Exemption	1. Section (c)(6) notes that "Demolition of structures, except those structures that are listed on or that meets the criteria for listing on the national register or Hawaii Register of Historic Places" would qualify for an exemption determination. We aren't sure at what point an applicant would be made aware that their property/structure would "meet the criteria of listing on the national register or Hawaii Register of Historic Places" and would therefore need to prepare a Chapter 343 Hawai'i Revised Statutes review document. We offer this comment for the EC's consideration.	§ 11-200.1-15	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes
Bridget Hammerquist: Friends of Maha'ulepu	General; Amend vs Repeal and Replace	Repealing Chapter 200 and replacing with Chapter 200.1 will increase difficulty of tracking amendments, interpreting case law and applying these rules. Integrating amendments to Chapter 200 instead of repealing avoids this.	n/a	The various drafts and rationale document allow for carry through. There will be an adjustment period and it will take people more time; however, we identify old and new sections making tracking possible. The current rules are disorganized, and adjustment is not a strong enough reason not to reorganize.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria	Revise Section 11-200.1-13(b) for finding significant impacts to align with 343-5 and more recent case law. More recent case law (Unite Here!, 2010) offers another and better standard of "may have a significant effect".	§ 11-200.1-13(b)	The Council rationale relied on 2005 case law that interpreted "may" to mean "likely". Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	Definitions	As defined, action includes a potential loophole for programs or projects that have previously escaped review and are ongoing. Proposes amendments. Definition of project is overly restrictive, but program is helpful. Proposes amendments.	§ 11.200.1-2	Re project: Proposed definition of project is aligned with and expands on recent case law (2017). Refer to OEQC/ EC for possible change.	
	Definitions	A definition of mitigation is needed. NEPA and CEQA have one.	§ 11.200.1-2	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	
	Use of Prior Exemptions, FONSIs, or EISs	Should follow public notice process and account for cumulative impacts based on the additionality of the proposed action to the prior determination	§ 11.200.1-11	The concept of additionality would point to the need for additional environmental review. The purpose of this section is to provide direction to agencies when the difference is negligible to none, including cumulative impacts, such that it is a component or aspect of what was covered in the prior determination. For example, building, rerouting, or extending a fence for a watershed. A watershed restoration plan that underwent an EA and received a FONSI may contemplate a number of components. Deviations on these components would still be covered, unless the deviation caused there to be direct, indirect, or cumulative impacts not contemplated in the prior FONSI, in which case the agency would make a determination that an exemption, EA, or EIS would be appropriate to the potential for significant impact of that deviation.	Yes
	Content Requirements; Draft EIS; Mitigation Measures	Proposed section provides important guidance on mitigation, but should further include a requirement that the agency or applicant consult with an expert scholar or specialized agency on the likelihood that the mitigation will work as proposed.	§ 11-200.1-24(p)	The EIS process calls for consultation. Not every mitigation measure requires an expert scholar or specialized agency to opine on the effectiveness of the proposed mitigation. Agencies and applicants are well-advised to get the best expert advice they can on their proposed actions. The OEQC can promote this suggestion in its guidance.	
	Content Requirements; Draft EIS; Comment Formatting/Batch Comments	Comments reproduced in environmental disclosure documents should be readable.	§ 11-200.1.24	Court rules currently impose font size specifications on pleadings. Make specifications in guidebook regarding formatting. Knowing how quick technology is changing, it makes sense not to include in the rules. General comments regarding font size and number of comment letters per page.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
		There should be substantive responses required for each issue raised in batched comments. Suggests multiple amendments to dealing with batched comments: The multitudinous of batched comments means that each topic raised, and particularly where a raised topic was further elaborated on in the comment, should meet with a substantive response that fully addresses each fact and issue raised. At minimum, we suggest the following amendment to §11-200.1-20(e): (e) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic: (1) The substantive response may be grouped, under subsection (d)(1), with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic and name; or (2) A single substantive response may be provided that addresses all substantive comments, point by point, within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; provided that, if a commenter adds a distinct substantive comment to a form letter or petition, that comment must be responded to pursuant to subsection (d) and reproduced in the		Re batched comments: Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as comment bombing. Revised language aligns with language in 11-200.1-26 that changes the requirement to respond 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 commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed. Possibly refine and improve this section but the commenter basically supports PIG suggestions. By name; reproduced in final document – already in the rules. If it's a point by point response, then it is substantive. No need to include that language.	
	Supplemental EISs	Supplemental EIS rules should provide for changed circumstances and new information warranting review.	§ 11-200.1-30	The Green Sheet addresses these issues. The Green Sheet allows all factors leaning toward or against additional review to be considered, rather than an arbitrary time limit.	
	Substantial Commencement/ 5-Year Review	Five-year review should be required where the action has not substantially commenced.	§ 11-200-27 (v.0.2)	The Green Sheet should address these issues without having to reintroduce the 5 year shelf life concept. Hawaii law is clear that time alone does not require a SEIS or further assessment. The Green Sheet allows all factors leaning toward or against additional review to be considered, rather than an arbitrary time limit. Reintroducing the shelf life would likely be a substantive change necessitating further public comment.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Response to Comments	Increase agency and applicant oversight and the public's confidence in the environmental review process. Suggests OEQC review EAs and EISs to ensure sufficient responses to comments. Also suggests approving agency for applicant prepared EAs and EISs be subject to the agency's own review and analysis. Wants greater agency oversight over applicant-prepared documents.	§ 11-200.1-7(e), § 11-200.1-24, § 11-200.1-26, § 11-200.1-27	Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. Because agencies are the entities that are the objects of judicial appeal, it is clearly in their interest to ensure that the information is accurate and complete.	
	Response to Comments	Wants consideration of comments in preparing substantial responses.	§ 11-200.-20, 11-200.1-23, § 11-200.1-24, 11-200.1-26, 11-200.1-27	Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. Because agencies are the entities that are the objects of judicial appeal, it is clearly in their interest to ensure that the information is accurate and complete.	
	Timing of EA Preparation	Retain 11-200-5(a) to prepare an EA at the earliest practicable time to determine whether an EIS shall be required for potential impacts of its actions, including overall, cumulative impact in light of related actions in the region and further actions contemplated.	§ 11-200-5(a) (version 0.2), 11-200.1-18(a)	The language retains "earliest practicable time". Section 11-200.1-14 addresses the point that the agency should assess the potential for significant impacts at the earliest practicable time, which means making a determination of the level of environmental review.	
Jordan Hart: Chris Hart & Partners	Content Requirements; Draft EIS; Cumulative Impacts	OEQC, the accepting authority or the approving agency should be required to provide specific guidance on the necessary analysis of cumulative impacts; e.g., which projects need to be analyzed (because the agency believes they are anticipated to occur); OR – a threshold should be established to allow determination of whether uninitiated actions are sufficiently likely to occur that they require analysis	§ 11-200.1-24(i)	We acknowledge that this is a difficult and controversial part of analysis. The complexity of factors involved in each individual EA or EIS is too great to have a formula. Agencies need to apply criteria that are reasonable in the circumstances. Using worst-case scenario and/or accepted maximum regional growth numbers can help. NEPA guidance from the EPA on assessing cumulative impacts is very helpful and provides something of a precedent. OEQC could consider issuing guidance.	
	General Types of Actions Eligible for Exemption; Affordable Housing	The need (or lack of need) for Compliance with general and or community plans should also be addressed.	§ 11-200.1-15 (c)(10)	LANGUAGE READS: (C) As proposed is consistent with the existing county zoning classification that allows housing; The intent was NOT to specify this, in order to allow flexibility. This does not necessarily imply that a General Plan/CDP amendment might not be needed – just that an EA is not needed.	
	General Types of Actions Eligible for Exemption; Affordable Housing	In the context of "residential" does the scale/ density need to· be equal to the specific zone or community plan designation? Should that be stated or is it already implied?	§ 11-200.1-15(c) (10)	The intent was NOT to specify this, in order to allow flexibility. This does not necessarily imply that a change of zone might not be needed – just that an EA is not needed.	
	Exemption Notices	Rules should require more detail in listing and publication of exemption notices, including a reasonably detailed scope description with diagrams (i.e. 1-2 pages of text, 1-2 pages of diagrams of the proposed action), hosted on OEQC site.	§ 11-200.1-17	It is expected that any exemptions that get "published" (i.e., do not qualify for simple listing under 11-200.1-17(c), and/or that the agency does not voluntarily publish) will contain this level of detail and will be hosted on OEQC. Exemptions that conform strictly to the types on publicly-vetted lists concurred to by the Council are more routine and will not require this. However, a LIST containing each exemption, including TMK, agency and other basic info, will be available and the public may inquire further of the agency, which must produce the notice upon request.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Kamakana Kaimuloa: Chamber of Commerce HI	Purpose	Reword: "Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process." [too aspirational and hard to fulfill] "Make efforts to conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process."	§ 11-200-1.1 (c) (3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language. Consider rewording to "Make every effort to conduct..." This language would then mirror existing language in item (c)(1).	Yes
	Definitions; EA	Replace the word "evidence" with "facts" in the new definition of EA as a written evaluation "that serves to provide sufficient evidence and analysis"	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.	
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an "analysis" of impacts and alternatives considered instead of an "identification and summary" of those impacts and alternatives. An "analysis" requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	Analysis is a fundamental part of the environmental impact assessment process. "Identification" and "supporting information" imply that a recitation of facts is sufficient to make important decisions concerning impacts and how to mitigate them. The revised language improves the Rules and also that reflects current practice in adequate EAs and EIS.	
	Content Requirements; Draft EIS	"reasonably foreseeable" consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: "the reasonably foreseeable environmental consequences"	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent. PIG discussed whether to retain this language or revert to the existing 1996 language.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Sam Lemmo: Office of Conservation and Coastal Lands (OCCL), DLNR	Content Requirements of Draft EAs and EISs; Sea Level Rise	Add to 11-200.1-18(d) a new paragraph (11) "Discussion of vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-18(d)	This content is more appropriate to existing items (6) to (8) in 11-200.1-18. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.	
	Draft EA Contents; Sea Level Rise	Amend 11-200.1-18(d)(6) to include “State sea level rise exposure maps”.	§ 11-200.1-18	This makes sense to add as a type of map to include along with other maps to show the affected environment. This would also make sense for subsection 11-200.1-24(g).	Yes
	Draft EIS Contents; Sea Level Rise	Add to 11-200.1-24 a new paragraph that states: “The draft EIS shall contain a separate and distinct section that provides State sea level rise exposure maps and discusses vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area.”	§ 11-200.1-24	This content is more appropriate to existing paragraphs in 11-200.1-24, such as (i) regarding the environmental setting, (j) regarding the relationship to land use plans and policies, (l) impact analysis, (m) regarding risks and long-term tradeoffs, (o) regarding probable effects that cannot be avoided. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.	
Jennifer Lim: Carlsmith Ball	Purpose	Notes that there is a significant difference in the timing of the planning process and decisionmaking process. Suggests taking out that phrase and leaving “earliest practicable time,” which aligns with HRS 343-5(e).	§ 11-200.1-1(b)	This is existing language, however the suggested language uses the statutory phrasing.	Yes
	Purpose	Suggests taking out language referring to consultation in good faith.	§ 11-200.1-1(c)(2)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes
	Definitions	Suggests replacing “definitions” with “consultation and content”	§ 11-200.1-2	The use of definition is "statutory" language.	PIG discussion for Council consideration: strike “definitions and” but don't add “consultation and content” and remove comma after “EIS”
	Definitions	Suggests changes to “accepting authority” definition to align with changes proposed in “acceptance” definition	§ 11-200.1-2	The definitions of "acceptance" and "accepting authority" should have similar phrasing.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	Questions whether “addendum” definition should also mention “accepting authority	§ 11-200.1-2	An addendum is defined as being an attachment to only a draft EA or draft EIS. In the case of an EA, the rules require that the proposing agency or approving agency file the draft EA with the OEQC for publication. Only agencies can ask OEQC to publish EAs because the EA is accompanied by an anticipated FONSI in the case of a Draft EA. In the case of EISs, applicants are required by statute to prepare the document and the applicant submits it to the OEQC for publication and simultaneously to the accepting authority. The accepting authority is not formally involved with the request to OEQC to publish the draft EIS so would not have a role in preparing an addendum and filing it with the OEQC.	
	Definitions	In EA definition, questions whether we should have information instead of evidence.	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	Definitions	Def of FONSI: suggests changing "will not" to "is not likely to"	§ 11-200.1-2	The existing wording is from HRS Section 343-2.	
	Definitions	The rules should make clear what is meant by mitigation measures, and include a definition. Suggests NEPA and CEQA language	§ 11-200.1-2	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that “the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts”. This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	Yes
	Definitions	Suggests revising “project” definition to align more closely with Umberger, specifically that some projects may not have beginning and end points	§ 11-200.1-2	The definition in *Umberger v DLNR* is "a specific plan or design" or "a planned undertaking". Some connection to environmental impact may be needed in the project definition.	Yes
	Definitions	Suggests “significant effect” definition should more closely track the significance criteria in 1-13	§ 11-200.1-2	The language is from HRS Section 343-2. There is a discrepancy between the wording in the rules and statute definitions with the significance criteria language in Section 11-200.1-13(b)(4) with respect to the phrase "community or State".	Yes
	Definitions	Suggests a simplified definition, arguing that the details of when a SEIS is required should be left to 11-200.1-20.	§ 11-200.1-2	The Council decided to not amend the supplemental EIS sections except for grammatical and housekeeping changes.	
	Periodic Bulletin	Suggests replacing “proposed activity” with “proposed action” to avoid ambiguity.	§ 11-200.1-4	In Section 11-200.1-11, the Council tried to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program. This may be outside the scope of the Council's authority as HRS Chapter 343 is about actions and authorizes the Council to make rules about implementing HRS Chapter 343. This direction was carried over to Section 11-200.1-4 and any revisions made to -11 should be reflected in -4.	Yes
	Filing and Publication in the Periodic Bulletin and Withdrawal	Adds “issue date deadline” for clarification.	§ 11-200.1-5	This language clarifies the connection between this section and the definition of "issue date".	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Filing and Publication in the Periodic Bulletin and Withdrawal	Suggests several revisions to include stated affirmative obligations rather than possible requirements for those submitting materials to OEQC for publication in the bulletin.	§ 11-200.1-5	OEQC filing requirements rely on a form so that filers should know in advance but there are unique situations that sometimes require OEQC to make filer-specific decisions on what information to include.	
	Filing and Publication in the Periodic Bulletin and Withdrawal	Asking whether requiring the proposing agency or applicant to sign and date draft/final EIS is to preclude a consultant from doing so	§ 11-200.1-5	The intent is that the proposing agency or applicant is acknowledging responsibility for the document, especially when using a consultant or different preparer.	
	Filing and Publication in the Periodic Bulletin and Withdrawal	Suggests clarifying whether previously published draft EA/EISs need to be withdrawn in order to publish a second draft EA/EIS.	§ 11-200.1-5	The existing rules provide for withdrawing a determination in the case of an EA (i.e., a FONSI or EISPN) but a document in the case of an EIS. The proposed rules seek to provide for withdrawing EA documents and EIS determinations. In the proposed rules, no changes to the project means it is a republication while a change means it is a "second draft" etc. Withdrawal means that the obligation to respond to comments goes away. Further clarification may be needed on how to address republication when there is a change in a project versus no change in a project and how that relates to commenting. OEQC to clarify through guidance.	
	Filing and Publication in the Periodic Bulletin and Withdrawal	“Although I assume the term "consultant" is intended to mean the EA or EIS preparer, that is not defined anywhere.”	§ 11-200.1-5(b)	The term "consultant" is common in practice but "preparer" is more precise and relevant to environmental review documents. No definition is needed for either term.	Yes
	Filing and Publication in the Periodic Bulletin and Withdrawal	Concerned about the idea that the summary has to convey the full impact	§ 11-200.1-5(b)	This is existing language and has not been a problem. However, the revision would be more accurate as providing a "full" summary is difficult in the periodic bulletin. The intent behind it is to reduce the potential for the description to be purely self-promotional as OEQC does not editorialize the project description.	Yes
	Identification of Approving Agency and Accepting Authority	Is concerned this language may be problematic for applicant actions	§ 11-200.1-7(c)	Revised language includes an “if” so it does not mandate the agencies to consult if they've made a decision who is going to be the accepting authority/approving agency. Consultation is required only if they don't’ agree. OEQC could clarify through guidance.	
	Applicability of chapter 343, HRS, to Agency Actions	Suggests taking out last sentence of subsection because it may create confusion (“maybe” have a significant impact will require an EIS anyways)	§ 11-200.1-8(2)	This is existing language however it can create confusion and in some ways is a restatement of the environmental review process.	Yes
	Multiple or Phased Actions	Suggests replacing “undertaking” with “program”	§ 11-200.1-10(1)	This wording clarifies the meaning of the language. The whole section could also be recharacterized as being about "programs".	Yes
	Use of Prior Determinations	Suggests changing every instance of the term “proposed activity” to “proposed action”	§ 11-200.1-11	The Council tried to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program. This may be outside the scope of the Council's authority as HRS Chapter 343 is about actions and authorizes the Council to make rules about implementing HRS Chapter 343.	Yes
	Consideration of Previous Determinations and Accepted Statements	Suggests making clear that you can incorporate info from previous determinations “by reference” Suggests using term “program EIS” instead of “programmatic EIS” (in section 1-11 too)	§ 11-200.1-12	Incorporation by reference may be handled in guidance. There is no need to repeat the Climate Atlas--it’s the book. Referring to a publicly available report from another agency is preferred. If necessary or helpful, include the report as an appendix. The main point is to make sure the information is accessible. If citing a document but reason why citing is not clear, then more information may be needed. OEQC could clarify through guidance.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria	Suggests language to keep consistent with defined terms	§ 11-200.1-13(a)	True that primary, secondary, cumulative, immediate, and delayed all come under definition of "effects" definition; this is a good point and makes the rules language succinct. The Council should be clear that if it adopts this kind of revision that it is not making the language weaker.	Yes
	Significance Criteria	Suggests taking out those terms covered in definition of "effects"/"impacts" and adding proposed mitigation measures because they are taken into account	§ 11-200.1-13(b)	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	Yes
	Significance Criteria	Suggests removing "historic" and "cultural" to stay under statutory authority of 343-2	§ 11-200.1-13(b)(1)	HRS Chapter 344, which sets forth the State's environmental policy, includes this in the definitions: "'Environment' means the complex of physical and biological conditions that influence human well-being, including land, air, water, minerals, flora, fauna, energy, noise, and places of historic or aesthetic significance." The rules are for Chapter 343, but Chapter 344 was established alongside Chapter 343 and is analyzed in EAs and EISs. Chapter 343 does not define environment, but does utilize an abbreviated definition (that includes cultural) in its definition of EIS. Limiting EAs and EISs to historic sites already listed on the Register versus a "historic resources" in terms of impact analysis and significance would not be consistent with the intent and practice of environmental review. The State has statutes that deal with many things related to environmental quality but they still require examination in an EA or EIS where they are relevant to having potentially significant impacts.	
	Significance Criteria	Change "or" to "and" to align with 343-2	§ 11-200.1-13(b)(4)	This is existing language however it is inconsistent with statutory language.	Yes
	Significance Criteria	Proposes clarifying language	§ 11-200.1-13(b)(8)	This is existing language. The proposed language is a restatement of the significance test.	
	Significance Criteria	Because county and state plans change over time, suggests language to ensure analysis is based on final plan in effect at the time	11-200.1-13(b)(12)	The proposed wording may have global implications beyond view planes significance. The existing rules and Proposed Rules refer to proposed or approved plans in the Draft EIS Contents section. Clarifying how to handle plans that were approved but never implemented or proposed but never finalized even after years would be helpful. There are also plans undergoing updates at the same time as an EIS and guidance on how to handle those concurrent processes would be helpful. OEQC could clarify through guidance.	
	Determination of Level of Environmental Review	Same as above - about primary, secondary, etc. being included under term "impacts"	§ 11-200.1-14	True that primary, secondary, cumulative, immediate, and delayed all come under definition of "effects" definition; this is a good point and makes the rules language succinct. The Council should be clear that if it adopts this kind of revision that it is not making the language weaker.	Yes
	General Types of Actions Eligible for Exemption	Listed versus eligible for register	§ 11-200.1-15(c)(6	The only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	General Types of Actions Eligible for Exemption	Requests clarification about conformance with state land use district	§ 11-200.1-15(c)(10)	This language is particularly worded so any edits must be done cautiously, but wording could probably be clearer. The language is intended to mean that the action must be within the State Land Use Urban District and also in a County zoning district that allows housing. The zoning language is meant to try to cover all four counties' different zoning ordinances. In terms of a sensitive area, a cross-reference to the significance criterion may be helpful.	Yes
	Exemption Lists	Wants automatic approval in case EC cannot make quorum to consider	§ 11-200.1-16(d)	Council approval of an exemption list is not usually a matter of urgency, since the process has many steps, and an agency may always make a specific exemption for a particular action that falls within the general types in the rules. A past Governor has declined to appoint enough members to get consistent quorum. However, the language already addresses this concern by providing for agencies to affirm their lists while there is no Council quorum.	
	Preparation and Contents of a Draft EA	Requests clarification of “referenced” and “cost-benefit analyses”	§ 11-200.1-18(b)	Any referenced material used to justify a significance determination or a FONSI/acceptance should be available to the public, either as an appendix or a stand alone report available online or some in some other format. HEPA does not have national security reasons like NEPA. Cost-benefit analysis is also existing wording and has not been an issue to-date. In general, it is looking at the trade-offs, not necessarily an applicant business pro forma or business plan that would share proprietary business information. Would be beneficial to discuss in guidance, clarify that any private reports must be attached as an appendix – make it available as public document.	
	Preparation and Contents of a Draft EA	Change “all required permits” to all permits known at time of filing of document Wants clarification about whether identifying only one of the approvals will suffice	§ 11-200.1-18(d)(3)	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review. Perhaps discuss in guidance.	
	Notice of Determination for Draft EAs	Suggest taking out “when applicable”	§ 11-200.1-19(b)	The phrase "when applicable" is not relevant to this and the word "determination" can be replaced with "FONSI" because this paragraph only speaks about what to do with a draft EA.	Yes
	Public Review and Response Requirements for Draft EAs	Suggests comments not sent to both approving agency and applicant can be ignored	§ 11-200.1-20(b)	If the interpretation is that the commenter has to send to both, rewording may be appropriate. The intent is that so long as either one gets the comment, the comment must be responded to. Making the commenter send to both and disqualifying the commenter from standing because only received the comment is too much of a process burden on the commenter. It is common in practice that the letter is only sent to one entity.	Yes
	Public Review and Response Requirements for Draft EAs	Suggests changing document to “EA”	§ 11-200.1-20(d)	This provides clarification.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Public Review and Response Requirements for Draft EAs	Suggests “address” instead of “resolve” Suggests taking out last clause so that the applicant doesn’t have to argue its case to commenters	§ 11-200.1-20(f)	While the existing language has not been used to mean resolving anyone's deeply held beliefs, "resolving" conflicts may not be clear language and may be difficult to achieve. Another word may be more appropriate, such as "reconciling" or "addressing". The intent is to do more than identify conflicting information, evidence, and comments, because a significance determination has to be made and mitigation proposed that can achieve the goal of reducing significant impact. If there are conflicting means to determine and achieve that then those conflicts need to be resolved/addressed/reconciled.	Yes
	Contents of a Final EA	Adds “the”	§ 11-200.1-21	Wording preference. No need to add articles throughout the rules when the meaning is clear.	
	Notice of Determination for a Final EA	(a): suggests further clarification similar to that for final EISs	§ 11-200.1-22	The statute explicitly requires automatic acceptance for an EIS, but not explicit for FONSI. Do not have the authority to do this.	
	Notice of Determination for a Final EA	(e)(2): Questions why there would need to be an accepting authority when it’s a FONSI	§ 11-200.1-22	This makes sense as the term "accepting authority" is relevant when EISs are being undertaken and a FONSI is a determination that no EIS is needed.	Yes
	Consultation Prior to Filing a Draft EIS	Same question re singular/plural for approval	§ 11-200.1-23(a)(3)	This is existing language. The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review. Perhaps discuss in guidance.	
	Consultation Prior to Filing a Draft EIS	Adds “applicant” to align with rest of section	§ 11-200.1-23(b)	It is more appropriate to change "proposing agency" to "accepting authority" instead of adding "applicant" as the accepting authority has a responsibility to ensure the proposing agency or applicant has conducted sufficient consultation. The language should be consistent for the EIS public scoping meeting as the Proposed Rules include it as a term of art.	Yes
	Content Requirements; Draft EIS	Same comment re cost-benefit analyses	§ 11-200.1-24(b)	Cost-benefit analysis is also existing wording and has not been an issue to-date. In general, it is looking at the trade-offs, not necessarily an applicant business pro forma or business plan that would share proprietary business information.	
	Content Requirements; Draft EIS	(2) Same comment re relying on definition of “effects”/”impacts”	§ 11-200.1-24(d)	True that primary, secondary, cumulative, immediate, and delayed all come under definition of “effects” definition; this is a good point and makes the rules language succinct. The Council should be clear that if it adopts this kind of revision that it is not making the language weaker.	Yes
	Content Requirements; Draft EIS	(7) Wants clarification on documents are being required	§ 11-200.1-24(d)	The list means documents other than 343 documents that can be used to identify segmentation, tiering, etc., including, prior 343 documents. The purpose is to identify if there have been previous EAs or EISs for the proposed site and are being incorporated by reference, or an action went through several iterations that required a second EA or EISPN, etc.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Content Requirements; Draft EIS	Suggests that (1) and (4) are not examples of a reasonable alternative that "could attain the objectives of the action"	§ 11-200.1-24(h)	Items (1) and (4) do not appear to be examples that could obtain the objectives of the action. The no action alternative is the bedrock of impact analysis. The Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508) for implementing the National Environmental Policy Act of 1969 (NEPA) state that NEPA analyses shall "include the alternative of no action" (40 CFR 1502.14). The no action alternative is something that should always be in an EA or EIS as it is an analysis of the current situation and how it is projected to continue.	Yes
	Content Requirements; Draft EIS	Suggests moving last clause to (h)(5), thinks this is a mistake from the old rules that we need to clean up	§ 11-200.1-24(i)	The phrase "in any event" is unnecessary. The separate and distinct section pursuant to 11-200.1-24(h) describing the alternatives is to have one spot to review what are the alternatives. The analysis of those alternatives in comparison to the preferred alternative is conducted throughout the EIS.	Yes
	Content Requirements; Draft EIS	Things need to make clear that the plans relied on need to be public, approved plans	§ 11-200.1-24(j)	The proposed wording may have global implications beyond viewplanes significance. The existing rules and Proposed Rules refer to proposed or approved plans in the Draft EIS Contents section. Clarifying how to handle plans that were approved but never implemented or proposed but never finalized even after years would be helpful. There are also plans undergoing updates at the same time as an EIS and guidance on how to handle those concurrent processes would be helpful. OEQC could clarify through guidance.	
	Content Requirements; Draft EIS	Suggests that language related to the alternatives analysis should be consolidated into one section 11-220.1-24(h)	§ 11-200.1-24(i) and (o)??	The separate and distinct section pursuant to 11-200.1-24(h) describing the alternatives is to have one spot to review what are the alternatives. The analysis of those alternatives in comparison to the preferred alternative is conducted throughout the EIS.	
	Content Requirements; Draft EIS	(p) Adds clarifying language that the mitigation measure only happens if the project moves forward.	§ 11-200.1-24(p)	This edit makes it clearer that mitigation measures only occur if the proposed action moves forward.	Yes
	Content Requirements; Draft EIS	(r) Adds clarifying language	§ 11-200.1-24(r)	This is an oversight in the draft. Language should be "draft EIS".	Yes
	Content Requirements; Draft EIS	(s)(4) Clarifies which handouts at an EIS public scoping meeting should be included in the EIS	§ 11-200.1-24(s)(4)	Proposed language using "any" captures the possibility of plural in case a proposing agency or applicant chooses to hold more than the one required EIS public scoping meeting. Clarification that the handouts are by the proponent is helpful as not everything brought to a meeting by anyone is relevant and should be required to be included.	Yes
	Public Review Requirements for Draft EISs	Need to be clear that comments go the applicant as well	§ 11-200.1-25(b)	If the interpretation is that the commenter has to send to both, rewording may be appropriate. The intent is that so long as either one gets the comment, the comment must be responded to. Making the commenter send to both and disqualifying the commenter from standing because only received the comment is too much of a process burden on the commenter. It is common in practice that the letter is only sent to one entity.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Comment Response Requirements for Draft EISs	Same as above	§ 11-200.1-26	If the interpretation is that the commenter has to send to both, rewording may be appropriate. The intent is that so long as either one gets the comment, the comment must be responded to. Making the commenter send to both and disqualifying the commenter from standing because only received the comment is too much of a process burden on the commenter. It is common in practice that the letter is only sent to one entity.	Yes
	Comment Response Requirements for Draft EISs	Suggests “address” instead of “resolve”	§ 11-200.1-26(d)	While the existing language has not been used to mean resolving anyone's deeply held beliefs, "resolving" conflicts may not be clear language and may be difficult to achieve. Another word may be more appropriate, such as "reconciling" or "addressing". The intent is to do more than identify conflicting information, evidence, and comments, because a significance determination has to be made and mitigation proposed that can achieve the goal of reducing significant impact. If there are conflicting means to determine and achieve that then those conflicts need to be resolved/addressed/reconciled.	Yes
	Comment Response Requirements for Draft EISs	Suggests taking out last clause so that the applicant does not have to argue its case to commenters.	§ 11-200.1-26	The word "overriding" may seem unnecessary but is used throughout the rules. This is existing language and has not been an issue to-date.	
	Content Requirements; Final EIS	Concerned that lack of specificity regarding “any public meetings” could invite litigation; wants Council to clarify	§ 11-200.1-27(b)(4)	This is an oversight in the draft. Language should be "EIS public scoping meeting".	Yes
	Acceptability	Concerned that references to “approving agency” throughout this section confuses the reader	§ 11-200.1-28	To make the language clearer, the EIS sections should just refer to the accepting authority and the explanation of whether that accepting authority is the governor, mayor, authorized representative, or approving agency, can be worked out in the definitions and earlier sections.	Yes
	Supplemental EISs	Suggests streamlined language Recommends deleting last sentence of subsection (a)	§ 11-200.1-30	The Council decided to not amend the supplemental EIS sections except for grammatical and housekeeping changes.	
Stephanie Nagata: Office of Mauna Kea Management	Significance Criteria	Please add a clear statement of how positive or beneficial impacts affect the significance determination and need for level of review.	§ 11-200.1-13	Adding further explanation may be best handled through guidance.	
Sean O'Keefe: Alexander & Baldwin	Exempt Actions, List, and Notice Requirements	This section includes among general types of actions eligible for an exemption from the preparation of an Environmental Assessment "Demolition of structures, except those structures that are listed on or that meet the criteria for listing on the national register or Hawaii Register of Historic Places". Conversely, the existing Section 11-200-8(a)(8) identifies as an exempt class of action "Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS". Objections to the restriction on exemptions for structures that "meet the criteria" for listing on the Register.	§ 11-200.1-15(c)(6)	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Applicability of Chapter 343, HRS, to Agency Actions	A&B recommends that the existing language in 11-200-6(b) listing the categories of actions requiring the preparation of an EA be retained, and that consideration be given to language clarifying the scope of the HRS 343-5(a)(9)(A), HRS trigger as it applies to non-domestic wastewater treatment units, particularly those associates with ag operations.	§ 11-200.1-9(a)(2)	The 1996 rules did not address this issue either and did not provide any greater clarity than what is in the statute. The language of HRS Section 343-5(a)(9) has been amended numerous times since 1996 and the Legislature seems intent to continue to amend the triggers. Asking the Legislature to define the trigger or add clarifying language may be the better approach instead of relying on rules and them becoming disjointed from the statute in the future.	
Kathleen Pahinui	General	Need more community input. Require presentations to Neighborhood Boards for EA & EIS.	n/a	The rules require community input including from neighborhood boards during the early consultation and draft phases. The neighborhood boards only exist in Honolulu and do not have parallel entities in the other counties so it would not be appropriate to place an additional process step for actions only in Honolulu. OEQC could clarify through guidance.	
Mark Perriello: Kaua'i Chamber of Commerce	Purpose	Reword: "Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process." [too aspirational and hard to fulfill] "Make efforts to conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process."	§ 11-200-1.1 (c) (3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes
	Definitions; EA	Replace the word "evidence" with "facts" in the new definition of EA as a written evaluation "that serves to provide sufficient evidence and analysis"	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.	
	General Types of Actions Eligible for Exemptions	Support affordable housing provisions.	§§ 11-200.1-15	Acknowledged.	
Vincent Shigekuni: PBR Hawaii & Associates	Applicability of Chapter 343, HRS, to Agency Actions	Asks why no language like 11-200. 1-9(b) for "Agency Actions" (11-200. 1-8)?	§ 11-200.1-8	Agency actions do not have discretionary approval as a test of applicability. This is because use of county or state lands or funds – which an agency is presumably always doing in an "agency" action, is by itself a trigger; in fact, it is the original and most important 343 trigger.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria	OEQC should designate what agency's data they suggest planners rely on for determining if a project is proposed in a "sea level rise exposure area	§ 11-200.1-13(b)(11)	The identity of agencies that maintain data on expected sea level rise may change through the years. More important is the scientific backing behind the data, including differences in findings and interpretation, which should be discussed in the EA or EIS. The DLNR has published the authoritative sea level rise report for planning purposes in Hawaii. OEQC could discuss in guidance.	
	General Types of Actions Eligible for Exemption	1. Section (c)(6) notes that "Demolition of structures, except those structures that are listed on or that meets the criteria for listing on the national register or Hawaii Register of Historic Places" would qualify for an exemption determination. We aren't sure at what point an applicant would be made aware that their property/structure would "meet the criteria of listing on the national register or Hawaii Register of Historic Places" and would therefore need to prepare a Chapter 343 Hawai'i Revised Statutes review document. We offer this comment for the EC's consideration.	§ 11-200.1-15 (c) (6)	The only way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD. See Munekiya and Hiraga, above.	Yes
	General Types of Actions Eligible for Exemption	Should be revised be to add "emergency housing" or "safe-zone housing"? for areas with "homeless" or "houseless" and who cannot qualify for "affordable housing" rentals. These projects should not share the criteria of 11-200.1-15 (c)(10)(B) and (10)(C) – i.e., conformance with existing state urban land use classification and county zoning	§ 11-200.1-15	First, truly "emergency" housing may be covered under a State or County emergency proclamation, which suspends many laws including Chapter 343. If the situation is less dire, the Council believes that we should subject proposals to utilize state or county funds and/or lands and contradict recognized land use districts and zoning should not be exempt, particularly considering they may be large and impactful projects that require consideration of impacts and mitigation, and public review.	
	EISPN requirements	The requirement of providing when and where an EIS public scoping may be held, could be problematic in implementation. For instance, what if due to unforeseen circumstances, the meeting location or date or time is changed from what is reported in an EISPN	§ 11-200.1-23 (a) (9)	It is reasonable to believe that in this somewhat unusual circumstance, an accepting authority or court reviewing the validity of an EIS process would consider whether a good-faith and reasonably effective effort was made to inform the public of the change, through print media, the OEQC Environmental Notice, mailing lists, or other means.	
	Response to comments	Please clarify if the EIS public scoping meeting must be limited to a "public hearing format." In practice, we find many residents prefer to provide oral public comments, one-on-one, to avoid "public speaking" before an audience	§§ 11-200.1-24 (s) (2), 11-200.1-24 (s) (3), 11-200.1-26 (b), and 11-200.1-26	OEQC will prepare guidance on this after adoption of the rules.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Laulani Teale	General	Should require permission from people consulted before using their name.	n/a	The Council is aware that there are cases where agencies or applicants have represented that people who attended a meeting are supporting the action when the person in question only attended to learn or oppose the action. On the other hand, an agency or applicant may send a letter requesting comments and receive no reply. The agency or applicant is obligated to identify that this person was contacted and received no reply. Trying to obtaining permission before including the person's name as someone contacted would be impractical. In the context of environmental review, the default assumption for everyone involved is that the information and process is public. If there is a need for confidence, such as not disclosing the fact that someone attended a meeting, then that should be resolved between the individual and the agency. Section 11-200.1-24(s) provides that attendees to EIS public scoping meetings and people who were consulted but had no comment should be identified as having no comment. This helps address the situation where an agency or applicant might try to represent the person as supporting the action.	
		State should choose EIS preparers from a list, not the developer. And fixed cost scale.	n/a	HRS Chapter 343 states that applicants are to prepare their own EISs It would be too difficult to establish who at the State would make the choices, and to establish selection criteria.	
Kimbal Thompson: Marine and Coastal Zone Advocacy Council	Emergency Actions	Supports greater review of emergency actions. Provides multiple examples of shoreline hardening in southwest Maui that should have had review under 343. Supports the requirement that emergency actions be substantially completed within 60 days to make it more difficult for agencies to use the emergency action exemption where it does not apply.	§ 11-200.1-8(b)	Support acknowledged.	
	Contents of EAs and EISs; Sea Level Rise	Wants sea level rise exposure areas added to list of areas that could be considered environmentally sensitive.	§ 11-200.1-13	Support acknowledged.	
	Definitions	Wants a definition of “cultural practices”	§ 11.200.1-2	The Environmental Council is not defining this term. The State Constitution and State Legislature have declined to define it. It is not the place of the Council to defines these terms for everyone.	
	General Types of Actions Eligible for Exemption; Exemption Lists	Certain beneficial projects in the coastal zone known to have little or no impact on sensitive resources be exempted from HRS Chapter. For example, fishpond wall reconstruction, removal of invasive species, installation of pin moorings in sandy substrate to prevent anchoring boast in coral. Another way could be to do something like a categorical exclusion or CATEX.	§§ 11-200.1-15, 16	The subject of beneficial projects has been discussed by the Council. PIG discussion did not come to a conclusion on that. The examples listed would already be eligible to be on an agency’s exemption list. Also, the Council is promoting the use of programs going through environmental review and has looked to DLNR's fishpond restoration EA as an example of best practice that other agencies should follow.	
Pamela Tumpap: Maui Chamber of Commerce	Purpose	Reword: “Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process.” [too aspirational and hard to fulfill] “Make efforts to conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process.”	§ 11-200-1.1 (c) (3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions; EA	Replace the word “evidence” with “facts” in the new definition of EA as a written evaluation “that serves to provide sufficient evidence and analysis”	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	New Scoping Requirements for Audio of Public Comment Section of Meeting	Generally uneasy with this; specifically, Is this requirement not met if no one elects to speak orally at the time reserved for oral comments? We suggest modifying the requirement as follows: The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded, if such oral comments are made.	§ 11-200.1-23 (d)	The requirement to record the portion of the meeting dedicated to oral comments stands regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that.	
	Contents Requirements; Draft and Final EAs and EISs	New rules require draft and final EAs and EISs to include an “analysis” of impacts and alternatives considered instead of an “identification and summary” of those impacts and alternatives. An “analysis” requires more time and effort and whether the analysis is sufficient can be challenged. The term itself is subjective. We suggest the language in the rationale be incorporated in the rules as follows: 11-200.1-18 (d)(7): Identification and supporting information regarding impacts and alternatives considered; 11-200.1-21 (6) Identification and supporting information regarding impacts and alternatives considered.	§§ 11-200.1-18, -21, -24, -27	Analysis is a fundamental part of the environmental impact assessment process. “Identification” and “supporting information” imply that a recitation of facts is sufficient to make important decisions concerning impacts and how to mitigate them. The revised language improves the Rules and also that reflects current practice in adequate EAs and EIS.	
	Content Requirements; Draft EIS	“reasonably foreseeable” consequences is a very subjective standard and will lead to challenges over whether the requirement has been met. We suggest the language be modified as follows: “the reasonably foreseeable environmental consequences”	§ 11-200.1-24 and 11-200.1-27	This language is drawn from NEPA and intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent. PIG discussed whether to retain this language or revert to the existing 1996 language.	
Lee Sichter	Definitions	Lack of definition of “substantial”.	§ 11-200.1-13	The Proposed Rules retain the word “substantial” from the 1996 Rules. Combining “substantial” and “adverse” is meant to set a standard that is higher than just having an effect and emphasizes that the focus is on negative effects rather than positive ones. Specifying a “loss ratio” (i.e. losing over 100 endangered birds) as the commenter suggests would be overly burdensome given that every action undergoing environmental review is different.	
	General Types of Actions Eligible for Exemption	Recommends leaving the sub-paragraph c6 as is, as requiring an EA to be done prior to the demolition of a 50+ year old building would add more time and money onto a development timeline, and make it more difficult for small businesses to redevelop their property.	§ 11-200.1-15(c)(6)	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Marti Townsend	Significance Criteria	The newly proposed regulations add the words “likely to” ahead of the list of potential conditions that would require an environmental impact statement. The standard instead should be “raise substantial questions regarding.” If the trigger to requiring an EIS is something is LIKELY to happen, then it will be much harder to require an EIS. Besides how would one know if something is likely to happen? The whole purpose of an environmental evaluation is to determine IF there might be impacts from the proposed action, and if so how severe would the impacts be.	§ 11-200.1-13(b)	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	General Types of Actions Eligible for Exemption; Affordable Housing	Suggests this exemption should define affordable housing as 60% AMI or below and expire ten years after adoption. If the housing crisis still exists in 10 years, then we can consider an extension of the exemption.	§ 11-200.1-15(c)(11)	The Council has worded the language to enable agencies to apply the exemption within the context of their own decisionmaking on what is affordable housing. Adding a new and separate AMI target will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas.	
	Content Requirements for EAs and EISs	The proposed revisions missed the opportunity to address the growing popularity of “pay to degrade” arrangements, where project proponents provide financial support for ancillary, indirect activities to “mitigate” the significant impact anticipated by a project proposal. These regulations should make clear that only mitigation measures that directly reduce the significant impact anticipated by the project should be considered, e.g. create new habitat to off-set habitat that will be lost due to a project.	§ 11-200.1-18, -24	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that “the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts”. This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	
	Exemption Lists	Suggests there is a need to define the word "minor" in the context of the restructuring of the exemption process, because properly employing exemptions hinges almost completely on whether an agency considers a proposed action to be "minor." Also, renewed exemptions should be reconsidered by the agency in full, instead of simply just granted again because it was granted before.	§ 11-200.1-16	The focus on exemptions is on whether specific types of actions may be exempt for having minimal or no significant effects, not the size of the action. In the 1996 rules, the use of "minor" occurs in two of the classes but not all of them. The role of the exemption list in the proposed 11-200.1 is to vet with the public those types of actions that an agency believes falls within the ambit of "minor" expansion, change, or alterations in the conditions of land/water/vegetation.	
	Supplemental EISs	The issue of when is an environmental evaluation too old to be valid has been seriously and repeatedly litigated in Hawaiʻi. This rewrite of the regulations should not miss the opportunity to provide clarity on this question. Suggests regulations should be amended to: A) Set a shelf-life EAs and EISs. We propose 5 years. B) Make clear that changed conditions to the surrounding environment and community -- not just to nature of the proposed action -- are grounds for requiring a new environmental review. C) Require environmental review on the renovation or reconstruction of previously exempted projects.	§ 11-200.1-30	The Council recognizes that the supplemental EIS process needs improvement and was unable to reach consensus on it during this rules update. The Council has indicated that it is willing to look at future rulemaking to address supplemental EISs. The Proposed Rules address item A by introducing Section 200.1-11 to promote the DPP practice of the "green sheet" to document the ongoing validity of an existing environmental review document. The Kuilima decision (Turtle Bay) made clear that changed conditions to the environment may be grounds for requiring a supplemental review. The Proposed Rules address item C in Section 200.1-11 and 12.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Malia Waits	Definitions	Concerned about the relevant substitutions for the FONSI wording in the new rule changes. There is no clear relevance addressing this in particular.	§ 11-200.1-2	The definition of FONSI is the same in the 1996 version as it is in the Proposed Rules. The acronym simply replaces the former term "negative declaration" which is the same thing as a FONSI. "FONSI" is the correct and common term used for a "negative declaration".	
	Exemptions generally	Another concern is that the exemption process has decreased operational efficiency when communicating with the public on exemptions granted.	§ 11-200.1-15, -16	Acknowledged.	
Michael Yee	Exemption Lists	Suggests that clarifications concerning de minimis actions and thresholds for exemptions will assist County agencies in identifying the actions that require examination for their potential to cause significant impacts, while avoiding needless documentation for truly minor projects with no potential.	§ 11-200.1-16(b)	Acknowledged	
	Consultation Prior to Filing a Draft EIS	The requirement to provide a scoping meeting at the EIS level is in line with the federal procedures and will assist all parties in properly determining the scope of the action and the studies that will need to be completed.	§ 11-200.1-23(8)	Acknowledged	
	Consultation Prior to Filing a Draft EIS	The requirement for audio recordings of the oral comments made during the comment portion of the scoping meeting is a fair one that will ensure that a valuable piece of public input, especially in a culture with a long and important oral tradition is not ignored or lost.	§ 11-200.1-23(d)	Acknowledged.	
	General	Likes the requirements concerning cultural impact assessment, proceeding direct to EIS, and affordable housing that were implemented as laws but not integrated into the rules.		Acknowledged.	
	General	The reorganization, clarifications and consistency improvements in the sections that deal with supplemental documents and programmatic EISs will make the process much easier to understand and navigate.		Acknowledged.	
	General	The simplification and clarification on responses to written comments will be helpful to agencies as they prepare or evaluate EAs and EISs.		Acknowledged.	
	General	The section of the rules dealing with conducting joint federal-state environmental review is an important improvement that will assist agencies involved in this process.	§ 11-200.1-31	Acknowledged.	
	Filing Requirements	It is important to have provisions in the revised rules that modernize submittals and deadlines to consider electronic communication, which will help save time, money and resources.	§ 11-200.1-4, -5, -6	The Proposed Rules have added "electronic" to the filing section to clarify that submittals must be electronic and through guidance will state that commenting and responding and distributing documents is preferably done via electronic communication however at times paper may be appropriate as an environmental/social justice concern.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Exemption Lists	Regarding exemptions, we support the provision that eliminates the requirement for consultations and publication if the agency has properly considered an exemption list and the Environmental Council has approved the exemption list for the agency within 7 years of the action. We recommend adding a clarification that once an action is listed on an exemption list, it is exempt across the board so that any agency can use exemptions from another agency's exemption list.	§ 11-200.1-16	The Council reviewed this in earlier drafts and believes that the agency list is specific to the agency; however, other agencies may consult with the Council to add that exemption element to their own list	
	Significance Criteria	We support requiring consideration of the impacts of sea level rise and greenhouse gases as significance criteria.	§ 11-200.1-13	Acknowledged.	
Kathy Sokugawa: Honolulu Department of Planning and Permitting	Definitions	Agree with definition of "program."	§ 11-200.1-2	Acknowledged.	
	Filing Requirements	Include that the Hawaii Documents Center is part of the Hawaii State Library.	§ 11-200.1-5	Agree. Unsure of where in 11-20.1-5 it would be placed. Perhaps as a note at the end of paragraph (e). Include in guidance.	
	Identification of Approving Agency and Accepting Authority	Support 11-200.1-7	§ 11.200.1-7	Acknowledged.	
	Significance Criteria	Further clarification needed to define what is meant by a "substantial" amount of greenhouse gas emission, especially in light of National and State goals and policies.	§ 11-200.1-13	A threshold is not set for anything else in the significance criteria. Always negotiated between agencies and applicants – depends on the situation. GHGs are new and we're still trying to figure this out. The state's goal is to get to zero greenhouse gas emissions by 2045. In terms of cumulative impact, guidance from OEQC working with other agencies would be important and a way to clarify this.	
	General Types of Actions Eligible for Exemption; Affordable Housing	…we do not support criteria (C) that will only exempt affordable housing if the proposed action is consistent with existing county zoning that allows housing.	§ 11-200.1-15	Discusses that HRS 201H sometimes proposes housing in areas where the county does not permit housing. They recommend that (C) be amended to consider the 201H approval process. Presumably that would allow an exemption in areas outside of county housing areas. That seems to take the exemption too far, where there has been no consideration of urban development. It does not seem appropriate for an exemption. In the areas where there has been a county zoning, there's already been vetting. 201H projects generally go through City Council/County Council – spot zoning. If outside of those areas, not agreeing to an exemption.	
	Public Review and Response Requirements for EAs and EISs	We do not support the limiting of responses to substantive comments ...though non-substantive may be grouped. Also, do not allow anonymous comments, it promotes duplication, pejorative and non-substantial comments.	§ 11-200.1-20 & -26	The new response requirements have been well vetted by the Council and other interested parties. In practice, many proponents reply to everything but there are instances of numerous pages of material that do not relate to the project at all. They are included to forestall abuses of the comment process. Such instances should not warrant detailed discussion or analysis. The request that anonymous comments should not be allowed and/or no response should be required is inconsistent with the purpose of Chapter 343.	
	Consultation Prior to Filing a Draft EIS	Supports new requirement for public scoping meetings.	§ 11-200.1-23	Acknowledged.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Suzanne Case: Department of Land and Natural Resources	Applicability of Chapter 343 to Agency Actions	HB 2106 requires all EAs and EISs to include consideration of sea level rise. DLNR expected the new rules to have substantive discussion of sea level rise in the "Content Requirements" section, concerned that this does not comport with the law.	§ 11-200.1-8	The proposed language was under consideration when the Legislature passed HB 2106 and already going through public hearing when Governor Ige signed the bill into law. The Legislature and Governor expressly did not find the proposed language to not comport with HB 2106. By adding the sea level rise exposure area to the significance criteria, all agencies must take it into account when deciding if a proposed action warrants an exemption, EA, or EIS. The contents of an EA or EIS would analyze the information in supporting a significance determination related to the potential for significant impact from being located in a sensitive area. No specific method of analysis is prescribed in the rules and the Council does not support prescribing a method for any one impact. Analysis methods and best practices evolve faster than rules updates and any method prescribed by rule would become outdated. As the proposing agency and approving agency for numerous actions, the DLNR can exercise its authority in applying analysis methods or requesting them as a commenting agency on others' actions.	
	Consideration of Previous Determinations and Accepted Statements	Agrees that prior exemptions, FONSIs or accepted EISs can be incorporated into exemption notices.	§ 11-200.1-12	A statement of support.	
	Consideration of Previous Determinations and Accepted Statements	Concerned that there is a reference to "programmatic" EIS and EA here, but not elsewhere in the rules. Suggests adding definition and recommends that OEQC formalize programmatic environmental documents.	§ 11-200.1-12	Note that earlier versions of the rules proposed a distinct section covering programmatic EISs, but it was determined that this would require sections for exemptions, EAs, and potentially supplemental EISs as well. In order to provide greater clarity, the Council proposed definitions of "project" and "program," which allows for the preparation of programmatic exemptions, EAs, and EISs. The PIG does not recommend adding a definition of programmatic because programmatic is the adjective form of program.	
	Significance Criteria	Supports the inclusion of culture into the significance criteria but recommends that "cultural resource" and "cultural practice" be defined.	§ 11-200.1-13	Any state agency seeking to define cultural resources or practices would be inappropriate. This issue has been discussed previously and the Rules Committee or EC decided against defining these terms.	
	Exemption Lists	Recommends council concurrence should only be needed when amendments are sought. Suggests changing proposed language to require agencies to review their own exemption lists within 7 years and then submit a letter to the Council acknowledging that the existing list is still valid.	§ 11-200.1-16	The Council continues to believe that agencies should revisit the list periodically even when no changes are proposed, as the Council may have changes to recommend or other best practices have evolved of which a given agency may be unaware.	
	Exemption Notices	Wants clarification as to whether agencies are required to submit their list of exemptions for publication each month. Notes that this would be time consuming, and that DLNR would prefer to continue keeping exemption notices on file for review upon request by the public or an agency.	§ 11-200.1-17	Agencies would be required to submit a list of their exemptions for publication each month. The Council is trying to balance the burden on agencies to document and track their decision making with the burden on the public to become apprised of an exemption and to be able to respond to the exemption in a timely way. The Council has also focused on which exemptions would be required to be submitted as only those items falling on Part 2 of the Exemption List would be published.	
	Preparation and Contents of a Draft EA	Recommends: (1) Amending (d)(6) to include state sea level rise exposure maps.	§ 11-200.1-18(d)	This makes sense to add as a type of map to include along with other maps to show the affected environment. This would also make sense for subsection 11-200.1-24(g).	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Preparation and Contents of a Draft EA	(2) Adding (d)(11) to include "Discussion of vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-18(d)	This content is more appropriate to existing items (6) to (8) in 11-200.1-18. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise.	
	Draft EIS Contents; Sea Level Rise	Recommends adding "The draft EIS shall contain a separate and distinct section that provides State sea level rise exposure maps and discusses vulnerabilities and adaptation measures if proposed action will take place fully or partly within the State sea level rise exposure area."	§ 11-200.1-24	This content is more appropriate to existing paragraphs in 11-200.1-24, such as (i) regarding the environmental setting, (j) regarding the relationship to land use plans and policies, (l) impact analysis, (m) regarding risks and long-term tradeoffs, (o) regarding probable effects that cannot be avoided. A separate and distinct section dedicated solely to sea level rise would prioritize one impact above others and not capture the full range of other relevant climate change impacts. Per the Sea Level Rise Vulnerability and Adaptation Report, the OEQC is developing guidance for how to integrate climate change into EAs and EISs, including sea level rise. EC could get into the weeds by prescribing what should be in studies, etc.	
Department of Transportation	Filing Requirements	Language should be added that makes filing with the OEQC electronic unless otherwise noted.	§ 11-200.1-4, -5, -6	In the Uniform Electronic Legal Material Act, HRS Section 98-2, "electronic" means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." Explicitly stating electronic may be helpful to agencies, applicants, and the public as they interact with the OEQC and the process.	Yes
	Filing Requirements	Language should be added that makes distribution of environmental documents through download link or other electronic distribution forms allowed unless otherwise noted.	§ 11-200.1-4, -5, -6	In the Uniform Electronic Legal Material Act, HRS Section 98-2, "electronic" means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." Explicitly stating electronic may be helpful to agencies, applicants, and the public as they interact with the OEQC and the process.	Yes
	Acceptability	DOT objects to 30-day period to make decisions when OEQC itself recognizes decisions may take longer and allows extension of time. Agencies should be allowed same extension of time as OEQC.	§ 11-200.1-28	The proposed change is consistent with statutory language. HRS paragraph 343-5(e) prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. The proposed change is so that OEQC may also have the same extension of time that agencies are able to have. The OEQC has the discretion to offer a recommendation to the agency and the proposed change allows for the recommendation to be within that 15 day extension.	
	Applicability of Chapter 343 to Agency Actions; Emergency Actions	Ensure emergency actions rules and procedures are consistent and do not conflict with other sections of the HRS that discuss emergency powers.	§ 11-200.1-8	In an emergency, the Governor has authority to suspend certain statutes for the duration of the emergency. Using an emergency for the long-term planning and implementation of a project or program as a means to avoid undergoing environmental review is inappropriate.	
	General	Following the adoption of the revised rules, DOT requests training be provided by OEQC on how the new rules will be implemented. This would be useful for HDOT staff.	n/a	Acknowledged. The Council is working with OEQC to develop a plan for updating its guidebook and doing training on the new rules	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Purpose	~~[An EIS] EAs and EISs [is] are meaningless without the conscientious application of the [EIS] environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.~~ Original language: [~~An EIS~~] EAs and EISs [is] are meaningless without the conscientious application of the [~~EIS~~] environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.	§ 11-200.1-1(b)	This language is existing language from the 1996 rules that originally was in the EIS sections of the rules. The Council believes this language is important to retain and make clear that these considerations apply throughout the environmental review process, so intentionally moved it to the front purpose section.	Yes
	Purpose	In preparing any ~~document~~ environmental study, **proposing agencies** and **applicants** shall....	§ 11-200.1-1 (c)	Changing to "any EA or EIS" would be more specific.	Yes
	Definitions	"Action" means ~~any~~ programs or projects to be initiated by and agency or applicant Delete the word "any" because "any program or project" is too broad a definition.	§ 11-200.1-2	The definition is from HRS Chapter 343. DOT's suggestion would narrow the definition and is contrary to the language and intent of the statute. The Council proposed definitions to "project" and "program" to help address the concerns about what is a project or program to go through environmental review.	
	Definitions	Add definition of "Days" Define if working or calendar days and make consistent throughout the rules.	§ 11-200.1-2	The statute and rules use "days" in both the sense of business days and calendar days. The Proposed Rules try to be clear about whether a time period is in terms of business days or calendars days in specific sections. The computation of time section could be made clearer to help understand how to count days.	Yes
	General	Compile a list of Discretionary consents by agency.	n/a	HRS Chapter 343 assigns responsibility for determining when it applies to agencies, not OEQC or the Council. It is up to the agency to determine if its determination is discretionary or ministerial.	
	Definitions	Add definition of "Ministerial Consent"	§ 11-200.1-2	The Proposed Rules include a definition for this.	
	Definitions	Add definition of "Early Consultation"	§ 11-200.1-2	Early consultation is as described in the sections. A definition is not necessary.	
	Definitions	Change to "EIS public ~~scoping~~ consultation meeting"	§ 11-200.1-2	The purpose of the required meeting is for scoping the content of the EIS. An agency could also conduct consultation meetings if it chooses to do so.	
	Significance Criteria	human and animal communities, ~~health~~, air, water, minerals, flora, fauna, ambient noise, and Listing "health" is unnecessary and problematic.	§ 11-200.1-13	Health is already included in the significance criteria. DOT does not present a reason why this would be unnecessary or problematic.	
	General Types of Actions Eligible for Exemption	Add definition - Exemption: minor and/or routine actions that are anticipated to have minimal or no significant effect on the environment such that the preparation of EAs and/or EIS necessary are based on a determination by proposing or approving agency.	§ 11-200.1-15	An "exemption" is shorthand for a specific type of determination under HRS Chapter 343 that is memorialized in an "exemption notice," which is defined.	
	Definitions	A **FONSI**, **Exemption**, or approved EIS is required prior to implementing or approving the action. Insert into the definition of FONSI. Without it, the definition is incorrect.	§ 11-200.1-2	DOT's proposed revision to this sentence is not needed for the definition. The last sentence is about process, not intrinsic to the meaning of a FONSI. The Council has removed process elements from the proposed definitions.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	Add to the definition of "program": plan resulting in a single or multiple projects having wide application or restricting the range of future alternative policies or actions,	§ 11-200.1-2	Change unnecessary. Language immediately prior to this sentence already captures the concept that multiple separate projects considered together may have an impact and could be considered a program.	
	Definitions	"**Program**" means a series of one of more projects to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A **program** may include: a number of separate projects in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; separate projects having generic or common impacts; an entire plan having wide application or restricting the range of future alternative policies or actions, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; ~~implementation of a single project or multiple projects over a long timeframe~~; or implementation of a single project over a large geographic area.	§ 11-200.1-2	A single project is not a program, but implementing a project over long timeframe does not automatically make it a phased project. Section 11-200.1-10 offers additional clarity on a single project being a phased project.	Yes
	Computation of Time	The language is confusing, suggest clarifying if time is calendar or working days.	§ 11-200.1-3	The statute and rules use "days" in both the sense of business days and calendar days. The Proposed Rules try to be clear about whether a time period is in terms of business days or calendars days in specific sections. The computation of time section could be made clearer to help understand how to count days.	Yes
	Consultation Prior to Filing a Draft EIS	Filing notice of an EIS public scoping meeting (which should change to consultation) is a new requirement. Deciding to hold one should be based on the complexity of the project. Mandatory EIS scoping meetings adds another layer to the process, adds time and costs and be a negative deterrent to development. Suggest consultation meetings could be held at the discretion of the agency. Final EAs, including notice of a FONSI, or an EISPN with thirty-day comment period and notice of EIS public scoping consultation meeting, and appropriate addendum documents;	§ 11-200.1-4 § 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.	
	Consultation Prior to Filing a Draft EIS	Recommend deleting "EIS public scoping meeting" or changing it to a consultation meeting.	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing "scoping" to "consultation" is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Filing Requirements	A letter can be transmitted through the postal service, fax, or electronically (PDF though email). To withdraw a submittal, the agency or **applicant** shall submit to the office a written letter informing the office of the withdrawal. The office shall publish notice of [agency] withdrawals and the withdrawal rationale in accordance with [section 11-200-3] this subchapter.	§ 11-200.1-5	In the Uniform Electronic Legal Material Act, HRS Section 98-2, "electronic" means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." Explicitly stating electronic may be helpful to agencies, applicants, and the public as they interact with the OEQC and the process. In this case, if the Council requires all submittals to the OEQC be electronic, then this would be captured.	
	Filing Requirements	What's the Hawaii Documents Center? Need an address. proposed **action** is to occur and one paper copy at the Hawaii Documents Center.	§ 11-200.1-5	The Hawaii Documents Center is part of the State Library System. Should its name or location change, then that will be inherited, just as agency exemption lists from 20 years ago are still being used by their successor agencies. This information is publicly available to anyone who chooses to look for it. To avoid having to revise the rules each time an address is changed, the rules do not refer to any particular address.	
	Filing Requirements	Subsection (e)(1)(C) provides distribution requirements for a Draft EA but this is the only section where this language appears. By comparison, (e)(5) says to file the Draft EIS with the accepting authority and OEQC, deposit one paper copy in the nearest state library, and one at the Hawaii Documents Center. Language should be consistent. (C) Distribute, or require the **applicant** to distribute, concurrently [~~with the filing in paragraph (5),~~] with its publication, the draft [~~environmental assessment~~] EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals [which] that the **proposing agency** reasonably believes to be affected;	§ 11-200.1-5	Draft EAs even for applicants are filed by agencies with the OEQC for publication. EISs are filed by applicants with the OEQC and simultaneously with their approving agency/accepting authority.	
	Republication of Notices, Documents, and Determinations	Delete this section. The issue with extending comment periods should be a stand-alone discussion, case-by-case basis and not connected to republication of documents. If the process allows comment-period extensions, new language should allow this process, without republication of the environmental documents. §11-200.1-6 Republication of Notices, Documents, and Determinations	§ 11-200.1-6	Refer to the Rationale document for why this section was created. The Council has already addressed in the Rationale document the points that DOT raises. The section addresses a clear need in the process for agencies wishing to circulate documents again to the public and requesting a standardized means to do so.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Applicability of Chapter 343 to Agency Actions	Add to the end of 11-200.1-8(a)(1) the following text "Except routine activities and ordinary functions that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly do not rise to the level of an action requiring chapter 343, HRS environmental review. Examples of routine activities and ordinary functions may include, among others, routine repair, maintenance, purchase of supplies, continuing administrative activities involving personnel only and personnel-related matters, and the routine rental and/or lease of interior building, office, warehouse, hangar, and/or commercial space (within the built environment) by lease, rental agreement, and/or revocable permit." The rental space in an airport has no potential to adversely affect the environment and is different from the issuance of leases, permits, and easements for development.	§ 11-200.1-8	This is language DOT suggests moving from the proposed section 11-200.1-16 Exemption Lists. It is not appropriate to put it in the trigger section because that implies that something is automatically out of 343 if it falls in this category. DOT's recommendation would narrow the concept of "use" as its examples being things not falling at all in the ambit of HRS Chapter 343, which may not be consistent with statute or case law. The language is more suited to the discussion of exemptions. The triggers are statutory and HRS Chapter 343 applies if you use state or county lands or funds. The exemption determination must be done after that.	
	Applicability of Chapter 343 to Agency Actions	No definition of "substantially commenced"	§ 11-200.1-8	In response to comments received during pre-consultation objecting to the Council's proposed definition of "substantial commencement" and asking for case law to control, the Council has declined to define that term.	
	Applicability of Chapter 343 to Agency Actions	Recommends defining "substantially commenced". There may be occasions where DOT is called upon to repair or replace facilities substantially damaged after a disaster and during a declared state of emergency. However, prior to beginning repairs HDOT may need to acquire federal and state permits, conduct structural assessments, acquire funding, expedite procurement and contracts, develop and approve facility designs, deal with various insurance related processes through the State Risk Manager, etc. Based on the proposed language it is not possible to determine when or if the action has been "substantially commenced."	§ 11-200.1-8	DOT's description of the steps it must take do not meet the definition of an emergency action as proposed. An "emergency action" is an action taken in "response to a sudden unexpected occurrence demanding the immediate action." DOT's description is of a permitting and procurement process does not seem to justify why environmental review would not be prudent but other permitting and financial matters would be. Furthermore, the Governor has authority to extend emergency declarations as needed until work is finished, as evidenced with several housing projects recently completed under multiple continuous emergency proclamations.	
	Applicability of Chapter 343 to Agency Actions	Add the text to the trigger language: Except routine activities and ordinary functions that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly do not rise to the level of an action requiring chapter 343, HRS environmental review. Examples of routine activities and ordinary functions may include, among others, routine repair, maintenance, purchase of supplies, continuing administrative activities involving personnel only and personnel-related matters, and the routine rental and/or lease of interior building, office, warehouse, hangar, and/or commercial space (within the built environment) by lease, rental agreement, and/or revocable permit.	§ 11-200.1-9(a)	This is language DOT suggests moving from the proposed section 11-200.1-16 Exemption Lists. It is not appropriate to put it in the trigger section because that implies that something is automatically out of 343 if it falls in this category. DOT's recommendation would narrow the concept of "use" as its examples being things not falling at all in the ambit of HRS Chapter 343, which may not be consistent with statute or case law. The language is more suited to the discussion of exemptions. The triggers are statutory and HRS Chapter 343 applies if you use state or county lands or funds. The exemption determination must be done after that.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Applicability of Chapter 343 to Applicant Actions	Insert new item #2 and new wording: The agency that initially approves the primary action shall also be responsible for approving Chapter 343 requirements when secondary action within the highway or public right-of-way triggers an EA.	§ 11-200.1-9(b)	The Council is using statutory language.	
	Applicability of Chapter 343 to Applicant Actions	Insert "related and" because an individual action may be a necessary precedent but not tied to the larger action. Numbering is inconsistent as other sections start with lowercase alphabet.	§ 11-200.1-10	This is existing language since 1996 and has not been raised as a problem throughout the rulemaking effort. If it is a necessary precedent, it is related. Numbering is consistent with the LRB HAR Drafting Handbook. There is only one subsection so it is does not receive a letter and the subunits below are numbered.	
	Determination of Level of Environmental Review	Disagree with the 30-day requirement for agency to approve. Insert the words fully completed request.	§ 11-200.1-14	The 30-day time period is in the existing rules. The words “fully completed” are redundant to the existing term “complete”.	
	Determination of Level of Environmental Review	The term "authorize" is unclear. Suggest replace with "require".	§ 11-200.1-14	"Authorize" is statutory language. The intent of the statutory language is that the agency does not compel an applicant who insists on an EA first to do an EIS, but does sign off on the applicant who wants to proceed to an EIS instead of first doing an EA.	
	General Types of Actions Eligible for Exemption	Is the intent to allow to the general list of types of add to the Exemption List? if general list of types, is that necessary or can it just be done by adding to Exemption List.	§ 11-200.1-15	This provision is in the existing rules and would operate the same way in the Proposed Rules. All individual exemptions must be made in one of the general types ("classes" in existing rules). The Council can be petitioned to add general types (classes) to the 11-200.1-15(c) which would in turn enable the exemption list to be updated with types under that general type and the agency to make individual exemptions under that general type.	
	Exemption Lists	HDOT suggests that OEQC develop a list of activities that should be placed under de minimis that can be used by all agencies. Agencies could add to this list when updating their own exempt list.	§ 11-200.1-16	HRS Chapter 343 assigns responsibility for determining what actions may be eligible for exemption to agencies. It is up to the agency to determine if what it does is considered de minimis.	
	Exemption Lists	(d) These exemption lists and any amendments to the exemption lists shall be submitted to the council for review and concurrence no later than seven years after the previous concurrence. (1) For exemption lists where there are No changes and amendments are not requested, a letter submitted by the agency certifying that the existing list has been reviewed by the agency and No changes or amendments are required shall be sufficient to be granted continued concurrence. No meeting is necessary. (2) For exemption list where changes or amendments are requested, the Environmental Council shall meet to review the proposed changes prior to granting concurrence. In the event the council is unable to meet due to quorum, the existing exemption list is considered valid until the council can have quorum and meet to consider the proposed changes and amendments. The Environmental Council may review agency exemption list periodically.	§ 11-200.1-16	The Council considered the proposed amendment when it voted out the draft rules. The Council continues to believe that agencies should revisit the list periodically even when no changes are proposed, as the Council may have changes to recommend or other best practices have evolved of which a given agency may be unaware.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Preparation and Contents of a Draft EA	A proposing agency shall, or an approving agency shall require an applicant to [Seek] conduct Early Consultation, seeking, at the earliest practicable time, the advice and input of the county agency	§ 11-200.1-18	This additional wording may be clarifying, though not needing capitalization or a definition.	Yes
	Preparation and Contents of a Draft EA	Delete: The scope of the draft EA may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EA shall indicate at appropriate points in the text any underlying studies, reports,	§ 11-200.1-18	The language directs the preparer to consider whether the action is a project or a program and to scope the document and discussion appropriately.	Yes
	Preparation and Contents of a Draft EA	and other information obtained and considered in preparing the draft EA, including cost benefit analyses and reports required under other legal authorities.	§ 11-200.1-18	The information to include is commensurate with the determination to be made and if the FONSI or EISPN determination relies on underlying studies, reports, or cost-benefit analyses, then they should be included.	
	Preparation and Contents of a Draft EA	Delete subsection (c) as the language creates confusion with the current process, which is working fine.	§ 11-200.1-18	DOT has not suggested what section this language would be more appropriate under. The Council has identified that the application of programs through environmental review is not well understood or practiced.	
	Preparation and Contents of a Draft EA	Insert additional words "reasonable anticipated".	§ 11-200.1-18	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.	
	Preparation and Contents of a Draft EA	(10) Written comments and responses to the comments [under] received and made pursuant to the early consultation provisions of [sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15,] subsection (a) and 30-day public review and comment period (or as otherwise statutorily prescribed) public review periods.	§ 11-200.1-18	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only “if any”. There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343 does not be put in conflict with the provisions of another statute.	
	Notice of Determination of Draft EAs	(2) [reviewing] Reviewing any public and agency comments, [if any,] during the Early Consultation and 30-day public review and comment period and	§ 11-200.1-19	This is existing language and has not been a problem.	
	Notice of Determination of Draft EAs	Delete the reference to accepting authority as this is about an anticipated FONSI.	§ 11-200.1-19	This makes sense as the term "accepting authority" is relevant when EISs are being undertaken and a FONSI is a determination that no EIS is needed.	Yes
	Public Review and Response Requirements for EAs	Revise language so that comments are sent to both the agency and the applicant.	§ 11-200.1-20	"Should" is not appropriate wording for administrative rules. The intent is that so long as either one gets the comment, the comment must be responded to. Making the commenter send to both and disqualifying the commenter from standing because only received the comment is too much of a process burden on the commenter. It is common in practice that the letter is only sent to one entity.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Public Review and Response Requirements for EAs	[thirty day] thirty day review period (or review period as otherwise statutorily mandated) review period, incorporate comments into the final	§ 11-200.1-20	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only "if any". There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343 does not be put in conflict with the provisions of another statute.	
	Contents of a Final EA	(9) List of reasonably foreseeable required permits and approvals (State, federal, county) [required]	§ 11-200.1-21	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review. Numbering is consistent with the LRB HAR Drafting Handbook. There is only one subsection so it is does not receive a letter and the subunits below are numbered.	
	Contents of a Final EA	or 11-200-15], and 30-day comment period (or other statutorily prescribed public review periods)	§ 11-200.1-21	The existing language of the rule makes clear that these requirements apply only if there are any comments made during early consultation and that the statutory review periods apply only "if any". There are cases where other statutes set a different comment period length for an EA or have other consultation requirements. This language is written to include those instances so that someone undergoing Chapter 343 does not be put in conflict with the provisions of another statute. Numbering is consistent with the LRB HAR Drafting Handbook. There is only one subsection so it is does not receive a letter and the subunits below are numbered.	
	Notice of Determination for Final EAs	Recommend using FONSI and EISPN as the "notice".	§ 11-200.1-22	The proposed language applies the definitions and emphasizes that the FONSI and EISPN are determinations in a notice instead of documents themselves.	
	Notice of Determination for Final EAs	Disagree with establishing a time limit of 30-days.	§ 11-200.1-22	This is an existing rules requirement that was moved and revised to this section.	
	Notice of Determination for Final EAs	Revise sections in 11-200.1-22 to remove the word "notice" and other wording changes. Procedural void after publication of an EISPN. Is there a challenge period?	§ 11-200.1-22	The proposed language applies the definitions and emphasizes that the FONSI and EISPN are determinations in a notice instead of documents themselves. Challenge periods are set by statute. There is a typo in the Unofficial Ramseyer but the official draft correctly identifies the paragraph as f for directing one to go to section 11-200.1-23.	
	Consultation Prior to Filing a Draft EIS	Insert "reasonably foreseeable" before "required permits..."	§ 11-200.1-23	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Consultation Prior to Filing a Draft EIS	Proposes changes to "EIS public consultation meeting"	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing “scoping” to “consultation” is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.	
	Consultation Prior to Filing a Draft EIS	Recommend deleting "EIS public scoping meeting" or changing it to a consultation meeting.	§ 11-200.1-23	The Council explicitly adopted requiring a mandatory scoping meeting and understands and intends that this is a new requirement on agencies and applicants. Changing “scoping” to “consultation” is contrary to the intent of the change. Agencies and applicants may do additional consultation at their discretion.	
	Content Requirements; Draft EIS	Suggest deleting highlighted text. It is a disclosure not decision-making document? They provide the information relative to the environmental conditions but do not decide if a project is constructed. The language should be revised with that understanding.	§ 11-200.1-24	The language is existing language since 1996 so to identify it as contrary to HRS Chapter 343 is a little late. Note the Findings and Purpose as stated in HRS Section 343-1: "It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." For applicants in particular, the document is required to be prepared only for the purpose of decisionmaking on an approval. Therefore, it should have enough information for the decision makers decision on the approval for which the statement is being prepared.	
	Content Requirements; Draft EIS	This requirement seems to request a statement of the trigger.	§ 11-200.1-24	This item is for the draft EIS to identify the involvement of state or county lands or funds.	
	Content Requirements; Draft EIS	Insert "reasonably anticipated" before "necessary approvals..."	§ 11-200.1-24	The language implies known permits and the process is flexible for changes in required permits as the action moves from draft to final due to changes in design or impact assessment. Final design may avoid some permits, require others. Among those approvals, the Proposed Rules require identifying the one approval (i.e., discretionary consent) that the approving agency has decided requires the applicant to undergo environmental review.	
	Content Requirements; Draft EIS	Choose to use "direct and indirect effects" or "primary and secondary effects" for consistency.(l)… including direct and indirect effects [shall be included]. The interrelationships and cumulative environmental impacts of the proposed action and other related [projects] actions shall be discussed in the draft EIS. [It should be realized] The draft EIS should recognize that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource [projects] actions, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall	§ 11-200.1-24	These terms are defined as synonyms.	
	Content Requirements; Draft EIS	The draft EIS shall include in a separate and distinct section [a description of] that describes all irreversible and irretrievable commitments	§ 11-200.1-24	Wording preference.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Content Requirements; Draft EIS	consultation period required in section 11-200-23A. If a number of comments are	§ 11-200.1-24	Edit addressed in previous version.	
	Content Requirements; Draft EIS	Responses to all substantive written comments made during the thirty-day consultation period	§ 11-200.1-24	Edit addressed in previous version.	
	Content Requirements; Draft EIS	Responses to all substantive written comments made during the thirty-day (or as statutorily prescribed) consultation period required in section 11-200A-23A.	§ 11-200.1-24	Edit addressed in previous version.	
	Public Review Requirements for Draft EISs	Public review shall not substitute for early and open discussion with interested **persons**. Is "open discussion" meant to mean early consultation, scoping, or public hearing?	§ 11-200.1-25	Language is clear.	
	Public Review Requirements for Draft EISs	Recommend using "published" instead of "issued": from the date that notice of availability of the draft EIS is initially issued published in the **periodic.**	§ 11-200.1-25	"Published" is a more accurate term.	Yes
	Public Review Requirements for Draft EISs	outside of the forty-five day comment period need not be [considered or] responded to	§ 11-200.1-25	Edit addressed in previous version.	
	Comment Response Requirements for Draft EISs	Insert "accepting authority" as this also relates to agencies.	§ 11-200.1-26	"Accepting authority" applies to both agencies and applicants, so removing "approving agency" would make the language more succinct.	Yes
	Comment Response Requirements for Draft EISs	the forty-five-day review period.	§ 11-200.1-26	HRS Sections 343-5(c) and (e) state: "The draft statement shall be made available for public review and comment through the office for a period of forty-five days."	
	Content Requirements; Final EIS	Suggest deleting highlighted text. It is a disclosure not decisionmaking document? They provide the information relative to the environmental conditions but do not decide if a project is constructed. The language should be revised with that understanding.	§ 11-200.1-27	The language is existing language since 1996 so to identify it as contrary to HRS Chapter 343 is a little late. Note the Findings and Purpose as stated in HRS Section 343-1: "It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." For applicants in particular, the document is required to be prepared only for the purpose of decisionmaking on an approval. Therefore, it should have enough information for the decisionmaker's decision on the approval for which the statement is being prepared.	
	Comment Response Requirements for Draft EAs and EISs	Insert "45-day": incorporate substantive comments received during the [consultation and] 45-day review processes in conformity with section 11-200A-26A, including reproduction of all…	§ 11-200.1-18, -26	Edit addressed in previous version.	
	Acceptability	OEQC acknowledges difficulty with completing actions within the 30-day time frame, so they should not place similar time constraints on agency actions.	§ 11-200.1-28	HRS paragraph 343-5(e) prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. The proposed change is so that OEQC may also have the same extension of time that agencies are able to have. The OEQC has the discretion to offer a recommendation to the agency and the proposed change allows for the recommendation to be within that 15 day extension.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Acceptability	Recommend deletion of this section unless the same standard applies to agency actions submitted to "accepting authority" for review. If the "approving agency" has 30 days to accept applicant actions, then the "accepting authority" should be subject to the same requirement and conditions.	§ 11-200.1-28	This is existing language in the 1996 rules and is derived directly from HRS Chapter 343. HRS paragraph 343-5(d) states that, for agencies, acceptance is a condition precedent to implementation of the proposed action. It also identifies the accepting authority for an agency EIS to be the governor or mayor. Does DOT wish to impose a 30-day review deadline on the Governor? HRS paragraph 343-5(e) prescribes that, in the case of applicants, an agency must issue an acceptance determination within 30 days of receipt of the final EIS, unless the applicant agrees to an extension not to exceed 15 days. Furthermore, the statute states that an applicant EIS is automatically deemed accepted after if the agency fails to accept or does not accept within 30 days. The statute makes a clear distinction in the acceptance timeline between agencies and applicants and the Council must work within the constraints of the statute.	
	Supplemental EISs	11-200.1-30 Supplemental Environmental Impact Statements	§ 11-200.1-30	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The OEQC can issue better guidance on those sections.	
Mark Fox, Nature Conservancy	General	Submitted written testimony; thanks the Council for its work and for undertaking a transparent process	n/a	Acknowledged. No suggestions for edits.	
Lee Sichter	Definitions	Requests a definition for the word "substantive".	§ 11.200.1-2	The rules provide direction on how to discern substantive from non-substantive comments. No need for a definition.	
	General Types of Actions Eligible for Exemption	Listed versus eligible for register	§ 11-200.1-15(c)(6)	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified architect conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes
Marti Townsend	General	Appreciate the process to date and Council effort.	n/a	Acknowledged.	
	General Types of Actions Eligible for Exemption	Affordable housing concern about the potential for abuse	§ 11-200.1-15	The Council has worded the language to enable agencies to apply the exemption within the context of their own decisionmaking on what is affordable housing. Adding a new and separate AMI target will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas.	
	Significance Criteria	Concerned about replacing "may" with "likely to"	§ 11-200.1-13	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	Response to Comments	Recognize that Council is trying to improve how to handle batched comments with revisions in this draft from earlier ones.		Acknowledged.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Lori Lum, Airlines Committee of Hawaii	Definitions	Definition of EA: Concerned that the word “evidence” implies a legal standard	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
David Arakawa, Land Use Research Foundation	General	Some EIS challenges are used as delay tactics. A common complaint is that project opponents use the EIS rules and technicalities to bring legal challenges and lawsuits to delay or stop projects, and new rules provide more litigation opportunities. This is a problem for certain stakeholders.	n/a	Legal challenges to exemptions, EAs and EISs, and deadlines to those challenges, are set forth by HRS Chapter 343. The proposed rules are not intended to create new litigation points that are not authorized by statute.	
	General	Unnecessary, duplicative and/or gratuitous changes. The majority of the current EIS rules work (no lawsuits); over 90% of the EIS’ are “accepted;” the subject matter of some of the proposed changes are already addressed in the existing EIS law or rules; and the rationale for certain proposed changes are based on questionable “comments,’ which should not justify a rule change;	n/a	No response required – general comment only.	
	General	New rule changes which include vague, subjective, unenforceable or unnecessary requirements will result in conflicting interpretations, more uncertainty, needless confusion and unnecessary litigation;	n/a	No response required – general comment only.	
	General	Unintended negative consequences. These legal challenges result in increased costs and delays for needed infrastructure and housing projects;	n/a	No response required – general comment only.	
	General	Unfair, one-sided and biased against agencies and applicants. Some of the proposed EIS rule changes do not address all relevant concerns in a fair and equitable manner.	n/a	No response required – general comment only.	
	Purpose	It is impossible to impose an aspirational “spirit” requirement with vague and subjective terms. This proposed revision requires “consultation” that is “mutual, open and direct, two-way communication, in good faith,” to secure the “meaningful” participation of agencies and the public in the environmental review process.”	§11-200.1-1(c)(3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Definitions	The proposed new “sufficient evidence” requirement is inconsistent with the current EIS law. The Chapter 343 does not require the presentation of “sufficient evidence.” The current definitions in Chapter 343 are working, so there is no need to add more subjective wording. It's supposed to be an information document. “Evidence” is a legal term used in litigation; submittal and acceptance of evidence requires certain specific legal requirements that are not required of EAs or Chapter 343.	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	General Types of Actions Eligible for Exemption; Historic Structures	[8](6) Demolition of structures, except those structures [located on any historic site as designated in] that are listed on, or that meet the criteria of listing on the national register or Hawaii [register as provided for in the National Historic Preservation act of 1966, Public Law 89 665, 16 U.S.C. §470, as amended, or chapter 6E, HRS] Register of Historic Places. The proposed rule would have unintended negative consequences: This rule could cause significant delays and obstacles in demolition of older structures. This vague, subjective and unenforceable requirement should be DELETED. The most reasonable and rational requirement is the existing rule, which allows an exemption for demolition unless the structure is on the national or Hawaii Register.	§ 11-200.1-15	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified professional to conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes
	Consultation Prior to Filing a Draft EIS; Scoping Meeting and Audio Recording	The new requirement of public scoping meetings and audio recordings are inconsistent with Chapter 343. Chapter 343, already requires numerous opportunities for substantial public review and comment of environmental documents; already requires responses to the comments by agencies/applicant. Potential problems if there are multiple people speaking at once. No guidance on what happens if there are no oral comments. Not opposed to having oral comments, testimony, or recordings, and responses to oral comments, but does see an issue with raising those things to a level where your EIS could be legally challenged. The requirement to audio record oral comments should be REVISED to address the above-referenced comments and unintended consequences.	§ 11-200.1-23	The intent is for audio recordings to be only for portions of the public scoping meeting that are dedicated to oral comments (one person at a time). OEQC will maintain the oral comments. The rules are also clear that oral comments do not need to be responded to – only that a summary be provided in the draft EIS. Beneficial to put in guidance.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Jennifer Lim	Use of Prior Exemptions, FONSI, or Accepted EISs	Suggests changing every instance of the term “proposed activity” to “proposed action”	§ 11-200.1-11	The Council tried to provide direction to agencies in the "gray area" between when something is an activity and when it rises to being a project or program. This may be outside the scope of the Council's authority as HRS Chapter 343 is about actions and authorizes the Council to make rules about implementing HRS Chapter 343.	Yes
	Significance criteria	Suggests adding proposed mitigation measures because they are taken into account when determining whether a proposed action is likely to have a significant effect on the environment	§ 11-200.1-13(b)	This helps clarify that mitigation measures are part of the significance determination.	Yes
Shannon Alivado	General; Intent	Legislative intent is that the EA and EIS are disclosure documents and wants Council to ensure they remain that way.	n/a	The term disclosure document is a good shorthand for what the statute prescribes, but it may not encompass the full intent. The rules have been reviewed and revised to carefully accomplish the purpose of the statute.	
	Purpose	The purpose clause now provides that consultation requires mutual open and direct two-way communication in order to secure the meaningful participation of agencies and the public in the process. There should be, assurance that these dialogues are open and mutual and that they're not an extra added burden to the process.	§ 11-200.1-1(c)(3)	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes
	Definitions	Problem with word “evidence”	§ 11-200.1-2	The use of "evidence" in the rules is a general term. It is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The evidence supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The current rules already implicitly include an analysis of facts.	
	Consultation Prior to Filing a Draft EIS; EISPN	What if there are no oral comments at all? Then there is nothing to record?	§ 11-200.1-23(d)	The intent is for audio recordings to be only for portions of the public scoping meeting that are dedicated to oral comments (one person at a time). OEQC will maintain the oral comments. A recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. It would be a short recording if nobody chose to speak.	
	Content Requirements; Final EIS	The most recent language includes language that suggest a summary analysis of impacts and alternatives considered and that technical language appears to require that this analysis, per se, is something more than a summary. Concerned that level of information required will become a burden.	§ 11-200.1-18 to § 11-200.1-27	While there are additions to content, the overall effect is balanced out by the changes to the response requirements allowing for responding to a group of similar comments and no longer needing to mail individual responses to commenters or reproduce all identical comments in the document.	
Teresa Nakama	N/A	Did not have time to review rules, wants to know how long people have to submit comments.	n/a	No suggestions for edits to Proposed Rules.	
Water Ritte	Identification of Approving Agency and Accepting Authority; Preparation of EISs	Concerned that those preparing EIS’s are not credible and don't understand the cultural significance of areas they are assessing.	§§ 11-200.1-7(e), 11-200.1-24, 11-200.1-26, 11-200.1-27	The statute does not have any requirements for certification of preparers. The State Historic Preservation Division has resources for hiring qualified professionals that EA and EIS preparers may rely on. The OEQC should conduct training of agencies and consultants, and clarify through guidance.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria	Wants subsistence activities protected in the EIS process via a separate and distinct section. Brought 1994 Molokai Subsistence Task Force Report to show importance of subsistence economy on Molokai.	§ 11-200.13(b)	This is essentially a cultural practice. The rules do not define any other practices and it is not the place of the Council to define what is a cultural practice. To the extent subsistence activities are social, community, or economic impacts, these should be analyzed in the appropriate sections. The OEQC should update its 1997 Guidelines for Cultural Assessments, and clarify through guidance.	
	Significance Criteria	Supports cultural impacts in significance criteria. Would like to see cultural analysis as a separate and distinction section.	§ 11-200.13(b)	Support acknowledged. The rules do not prescribe any impact method nor require a separate and distinct section for any particular impact. Practice evolves faster than rulemaking so best to include this in guidance.	
	Significance Criteria	Supports including cumulative impacts in significance criteria. Concerned with how cumulative impacts are determined.	§ 11-200.13(b)	The practice of documenting and assessing cumulative impacts needs improvement. The OEQC should address this in guidance and training.	
	Content Requirements; Draft EIS; Comment Formatting/Batching	Against batching of comments.	§ 11-200.1.24	Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as overwhelming the agency and/or applicant with identical comments that take advantage of the rules requirement to make the proponent spend an inordinate amount of effort on response. The revised language aligns with language in section 11-200.1-26 that changes the requirement to respond 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 commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed.	
	Content Requirements; Draft EIS; Comment Formatting/Batching	Supports scoping as part of the EIS process. Supports oral testimonies. A longer process helps alert the Molokai community to voice their concerns.	§ 11-200.1.24	Acknowledged.	
	Content Requirements; Final EIS; Mitigation Measures	Concerned about ability to pay to degrade. Doesn't solve the problem.	§ 11-200.1-27	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	Yes
	Types of Actions Eligible for Exemptions; Affordable Housing	Against affordable housing exemption.	§ 11-200.1-15(c)(10)	The Council has worded the language to enable agencies to apply the exemption within the context of their own decisionmaking on what is affordable housing. Adding a new and separate AMI target will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas.	
Karen Holt	Significance Criteria	Cumulative impact are very important in the EIS process.	§ 11-200.13(b)	General comment only.	
	Significance Criteria; Cultural Resources & Practices	Traditional cultural concerns over land and burial assessments must be adequate.	§ 11-200.13(b)	General comment only.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Content Requirements; Final EIS; Mitigation Measures	Opposed allowing degradation of land in return for payment (i.e. Pay to Play).	§ 11-200.1-27	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	Yes
	General	Need to control development	n/a	General comment only.	
	General	EIS is critical in protecting habitats and fisheries.	n/a	General comment only.	
Carl Berg Surfrider Foundation	Definitions	Definitions of projects and programs are too narrow and can restrict the scope of the actions.	§ 11-200.1-2	The proposed definition of project tries to give an operational meaning that distinguishes it from a program. Not everything government does falls under HRS Chapter 343, otherwise there would be no need for the definition of action or the triggers.	
	Definitions	The definition of mitigation is used in Chapter 343 as it is in NEPA	§ 11-200.1-2	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	
	General; Objectivity in Preparation	Concerned that applicants have autonomy over providing the own EAs, EIS and making determinations on what constitutes substantial comments. The rules should ensure that the HRS Chapter 343 environmental review process is fair and objective – that the fox is not guarding the hen house, so to speak.	§ § 11-200.1-7, 11-200.1-12, 11- 20.1-14(d), and 11-200.1-20(c),	HRS Chapter 343 prescribes that the agency has responsibility for determining when Chapter 343 applies, what level of review to undertake, and if the law is satisfied at the end of the process. Unlike with NEPA, which provides for an agency to allow an applicant to prepare the document, HRS Chapter 343-5(e) states that the agency requires the applicant to prepare the EA or EIS. This is why the rules address the applicant. The agency is responsible for deciding if the applicant has met the standard for sending the draft EA or EIS out for public comment and issuing a FONSI or acceptance. In turn, agencies are the entities that are the objects of judicial appeal. It is in their interest to ensure that the information is accurate and complete.	
	Types of Actions Eligible for Exemptions	Concerned revisions to exemptions allow for greater use of exemptions and are vague.	§ 11-200.1-15	This language has been retained from the original rules, at 11-200-8. Aside from the important point that it has in general worked well, it is not possible to attain crystal clarity on the exact boundary between which actions should be exempt and which should be not for the entire, exceedingly numerous and diverse actions that government must undertake or approve as a matter of course. Common sense discretion must be given.	
	Supplemental EISs	Rules clearly and adequately describe when supplemental EIS's are required – there are several triggers that need to be written more clearly.	§ 11-200.1-30(a) and (b)	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The OEQC can issue better guidance on those sections.	
	Use of Prior Exemptions, FONSIs, or EISs	Concerned this section is too broad.	§ 11-200.1-11	The existing 1996 Rules allowed for use of prior determinations and accepted EISs to satisfy HRS Chapter 343 requirements. The Proposed Rule continues to allow this use and clarifies how and when a prior determination or document may be used.	
	Significance Criteria	Wants sea level rise included in the criteria.	§ 11-200.13(b)	Support acknowledged.	
	NEPA Applicability to HEPA	More stringent review shall prevail.	§ 11-200.1-31(6)	Appears to just be a statement, not for or against.	
Rayne Regush	Comment Responses	Supports greater specificity regarding the mailing of responses from preparers to commenters, so commenters can expect a response sent to them before the final EA or EIS is published and not have to look for the final to track down their comment response.	§§ 11-200.1-7(e), 11-200.1-24, 11-200.1-26, 11-200.1-27	Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Jean Souza	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Proposing and accepting agency should not be the same as there is greater risk for inaccurate, biased assessments.	§ 11-200.1-7	Because agencies are the entities that are the objects of judicial appeal, it is in their interest to ensure that the information is accurate and complete.	
Eileen Kechloian	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Proposing and accepting agency should not be the same.	§ 11-200.1-7	Because agencies are the entities that are the objects of judicial appeal, it is in their interest to ensure that the information is accurate and complete.	
Bridget Hammerquist (First)	Significance Criteria	Concerned that the significance criteria revision from "may" to "likely" would raise the threshold for requiring an EIS. The Council should look to more recent court cases instead of the one from 2005. Also, to say that a significant impact is "likely" implies some level of study already done.	§ 11-200.1-13	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	General; Objectivity in Preparation; Identification of Approving Agency and Accepting Authority	Concerned that the agency or private applicant doing a project should have an accepting authority unrelated to them. Meetings should be conducted by someone unrelated to the proposer.	§ 11-200.1-7	The statute prescribes that the proposing agency makes its own determination about whether to prepare an EIS and that, if an EIS is to be prepared, the Governor or Mayor is the accepting authority. The statute allows for the Governor or Mayor to designate an authorized representative, which could be the proposing agency. In the case of applicant EISs, the statute generally assigns accepting authority responsibility to the approval agency.	Yes
Allan Rachap	Significance Criteria	Concerned that the significance criteria revision from "may" to "likely" would raise the threshold for requiring an EIS.	§ 11-200.1-13	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	General; Objectivity in Preparation	Concerned about who makes the determination that an impact is significant. Agencies and applicants can say they don't have impacts. Consultants backup clients with long reports that justify what the client wants.	§ 11-200.1-7	The statute prescribes that the proposing agency makes its own determination about whether to prepare an EIS and that, if an EIS is to be prepared, the Governor or Mayor is the accepting authority. The statute allows for the Governor or Mayor to designate an authorized representative, which could be the proposing agency. In the case of applicant EISs, the statute generally assigns accepting authority responsibility to the approval agency.	
David Hinazumi	Purpose	Concerned that the purpose section adds the phrase "secure a meaningful participation" as being subjective and that if one side is not cooperative then it is impossible to satisfy this purpose	§ 11-200.1-1	The PIG discussed this section as important for setting the tone of the rules and understands the concerns with aspirational language.	Yes
	General Types of Actions Eligible for Exemption	The exemption language for demolition of structures that are eligible for listing.	§ 11-200.1-15	The only way to definitively know whether a structure is an “eligible” property--even if only under Criterion D for information content--is to have a qualified professional to conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division/Officer. For public resources, Chapter 6E applies independently of Chapter 343 and their requirements should not be interwoven. For applicants, this can add unnecessary time and cost for a department to seek concurrence from SHPD.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Jesse Brown-Clay	General Types of Actions Eligible for Exemption	Concerned about exemptions are determined and whether the rules are loosening the standard for exemption.	§ 11-200.1-15	Not changing the standard for what can be exempted; Revision to exemption process would require publication of exemptions so public has a chance to be informed about them during the 120 day challenge period	
	General; Consultation Prior to Filing a Draft EIS	Example of Kauai Landfill EIS where at the public meeting the consultants would only take questions in writing and those questions would be responded to in the EIS.	§ 11-200.1-23	The proposed rules would formalize the writing aspect of public meetings to ensure that the commenter's intent is in the commenter's own words and that the response in the EIS is so that everyone has access to the comment and response. This does not preclude project proponents from engaging in dialogue and more outreach; it sets a minimum. The Council also added language to the purpose section on how outreach should be conducted.	
	Consultation Prior to Filing a Draft EIS	Frustrated with lack of transparency and outreach; request more robust public outreach and education, using online technology more, especially to engage young people	§ 11-200.1-23	The Proposed Rules have several provisions to improve transparency and outreach - publishing exemption determinations, requiring scoping meetings, shifting to electronic submittals and communication. Other aspects such as engaging young people more can be done through the OEQC as guidance and practice.	
	Consultation Prior to Filing a Draft EIS	Public processes should include the ability to answer questions in meetings.	§ 11-200.1-23	Under the current rules, scoping meetings are optional. The Proposed Rules require a scoping meeting for an EIS to be held now. While the scoping meeting will require written questions to be responded to in the EIS, it does not preclude project proponents from engaging in more meaningful dialogue. Ultimately, it is up to the accepting authority to set the level of engagement it expects from the proponent.	
Timothy Reis	General	Didn't really know what the meeting was about, heard it was about EIS rule changes and wanted to share some thoughts regarding the existing process. Re cultural issues for rocks – wants ground penetrating radar implemented as a requirement for all development. Long history of sacred sites being demolished in plantation areas, valleys. Concern with sacred sites being built on. Wants archaeologists to consider when rocks don't look like they're from a certain place; maybe tools. Heiau are built from specific stones. Also concerned about the pueo and why it wasn't listed as endangered. Need to consider habitat. Concern with drilling wells in areas that don't have water – should need to do an impact statement to identify springs that would be affected. It affects things that are important to Hawaiian culture and people who call Hawaii a home.	n/a	No specific comments on the rules. Impacts to named resources (among others) are considered in the process.	
Felicia Cowden	General; Process	Lack of trust in the process (e.g., EISs for Mauna Kea and Hawaii Dairy; challenges to pesticides). Concerned with wording shifts or changes that might change threshold of accountability. Concerned about the fox guarding the hen house.	n/a	The Proposed Rules have several provisions to improve transparency and outreach - publishing exemption determinations, requiring scoping meetings, shifting to electronic submittals and communication. Other aspects such as engaging young people more can be done through the OEQC as guidance and practice.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Concerned that the changes in commenting shift the burden of responsibility.	§§ 11-200.1-20, -23, -26	Re batched comments: Some of the major revisions to HAR 11-200.1 involve guidance on providing responses to comments received during public review periods. OEQC will prepare guidance on responses after adoption of the rules. The new response requirements regarding batched comments are included to forestall abuses of the comment process such as comment bombing. Revised language aligns with language in 11-200.1-26 that changes the requirement to respond 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 commenter separately. The rule requires that when batching responses, the preparer must include names of the individual comments who provided comments on that topic and who have been grouped so that those commenters can see whether their comment was adequately addressed. Furthermore, the proposed rules make clear that the accepting authority must make its own decision about whether the proposing agency or applicant properly identified all substantive comments and responded to them commensurately.	
	Significance Criteria	Issue with the significance threshold of "likely to" - needs to be fixed.	§ 11-200.1-13	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
Hope Kalai	General; Public Review and Comment Response Requirements for EAs and EISs	Community shouldn't be batched into one comment consideration. Everyone's comments/words are different. Impacts to culture, trail access, open space, water, etc. needs to be considered. If you weaken the process, it'll get worse. Don't lessen community voices. Endangered species need to be considered. Concerned with houses being built in loʻi.	§§ 11-200.1-20, -26	No specific comments on the rule section. Batching of comments has been addressed at length by the Council. Impacts to named resources (among others) are considered in the process. Consider adding language to rationale that intent is not to "batch" people's manaʻo or contributions – but topics only. Follow-up on what happens with copies of the individual comments (require that these are posted online only?)	
Vivien Davenport	General; Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	The process is built not hear our comments. Does not like that the rules are only available via PDF file – unable to copy and paste certain parts. Wants a word copy so that comments can more easily be given. Wants community meetings where people are able to ask questions and for people to come back if questions cannot be answered right away. Process is set up only for people with email and PDF access – not farmers, Hawaiians, those with language barriers.	§§ 11-200.1-20, -23, -26	No specific comments on the rule section. Consider adding language to rationale that intent is not to exclude anyone and if someone needs special accommodations, that can be done. The process moving to a more electronic process is more environmental and in line with current technology. Makes materials more easily available to more people.	
Ken Taylor	General	No specific comments on the rule section.	n/a	No specific comments on the rules. The goal of the process is to give weight to environmental considerations alongside economic and technical ones.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
Bridget Hammerquist (Second)	Definitions	Request good, clear definitions for project, action, and mitigation. My written comments will make suggestions on meaningful clear definitions.	§ 11-200.1-2	HRS Chapter 343 defines "action" and the Council is staying with the wording from the statute. The Council proposed definition for "project" and the PIG recommends adjustments to it. The Council has not contemplated a definition of mitigation throughout this rulemaking effort. The PIG believes introducing a definition at this point would be an issue but recommends that the Council consider taking up mitigation as a future endeavor.	Yes
	Notice of Determination for Draft EA	An agency finalized an EA and submitted the FONSI for publication to the OEQC one day after the close of the public comment period. Please give effect to the 30-day comment period in the rules. If the FONSI is issued immediately after the comment period, then inferentially the agency did not give the comment much consideration. Add to the rules some evidence that the applicant has taken the comments into consideration.	§ 11-200.1-19	HRS Chapter 343 gives responsibility to agencies to submit EAs to the OEQC for publication. An agency is assuming its own risk in submitting a Final EA and FONSI the next day after a comment period. There is the chance that a commenter's letter may arrive afterward but still be timely submitted so long as it is postmarked by the close of the comment period. Should that occur, the commenter would have to file in court that the agency violated the process. On the other hand, there are EAs that receive few to no comments and an agency may appropriately move to final after the close of the comment period.	
Susan Strom	Public Review and Response Requirements for Draft EAs	Concerned that subsection (c) is amended to provide that the proposing agency or applicant may deem whether comments are substantive vs non-substantive in deciding whether a response is needed.	§ 11-200.1-20(c)	This section incorporates language from the comment response requirements for EISs in section 11-200.1-26 providing guidance on how to discern substantive from non-substantive comments. By differentiating between these types of comments and allowing for grouping of comment responses, the proposed rules intend to modernize and simplify the environmental review process.	
Lynn McCrory	General	Support encouraging and requiring greater public access and interaction with the public	n/a	Acknowledged	
	Definitions	The differentiation between project and program is a major difference that helps to think about what do and how to do it	§ 11-200.1-2	Acknowledged	
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Responding to substantive comments and chain letters saves time.	§§ 11-200.1-20, -23, -26	Acknowledged	
	NEPA Applicability to HEPA	Federal entity issuing an exemption or FONSI and the state or county agency can include that in its decision is major. The federal process takes a lot of work and often more than the state or county requirements.	§ 11-200.1-31	Acknowledged	
Gabe Johnson	General	Changes to the rules should help us with realizing the responsibilities for the public trust doctrine in our state constitution. The changes should not make our EIS law weaker.	n/a	Acknowledged	
Tamara Paltin	Definitions	Requested the rules to define "mitigation" and add requirements to make sure that mitigation works.	§ 11-200.1-2	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that “the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts”. This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	Yes

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Use of Prior Exemptions, FONSI, or Accepted EISs	The use of prior exemptions should go through public notice and comment.	§ 11-200.1-11	This section clarifies how and when an agency may determine that a prior exemption, final EA or accepted EIS satisfies chapter 343. The proposed rule intends to create a consistent process and provide agencies with direction on what to consider when determining if a proposed activity is covered under a prior exemption, final EA, or accepted EIS. The rules encourage agencies to publish these determinations but do not require it.	
	General Types of Actions Eligible for Exemption	Does not want to see exemptions for reconstruction or renovation of grandfathered structures such as seawalls.	§ 11-200.1-15	There may be instances where an exemption would be appropriate. As a safeguard, the Council has proposed requiring agencies to submit their exemptions every month to the Notice for publication to the public.	
	General Types of Actions Eligible for Exemption	Put a unit limit in the exemption for affordable housing.	§ 11-200.1-15	The Council has worded the language to enable agencies to apply the exemption within the context of their own decisionmaking on what is affordable housing. Adding a new and separate AMI target will create further complications and arbitrage instead of facilitating infill development in existing urbanized areas.	
	Public Review and Comment Response Requirements for EAs and EISs; Consultation Prior to Filing a Draft EIS	Require substantive responses to each substantive comment.	§§ 11-200.1-20, -23, -26	This is in the proposed rules.	
	Supplemental EISs	Make new information about impacts of an action trigger a supplemental EIS.	§ 11-200.1-30	This is the current standing interpretation based on Turtle Bay. The Council has not proposed changes to the SEIS sections.	
	Supplemental EISs	EISs need a five-year shelf life if no construction is begun or completed.	§ 11-200.1-30	The Council did not propose edits to the supplemental EIS sections after considering them in multiple earlier drafts. The OEQC can issue better guidance on those sections.	
	Significance Criteria	Remove the language of "likely" for the significance criteria.	§ 11-200.1-13	The Council rationale relied on 2005 case law that interpreted “may” to mean “likely”. Given recent case law, it may be better to use the statutory word "may" rather than try to provide alternative phrasing.	Yes
	Retroactivity	Clarify when the rules will take effect and what happens to old EAs and EISs or partially done when the new rules take effect.	§ 11-200.1-32	Section 11-200.1-32 addresses the transition. In brief, any EA or EIS that has gone to the public as a draft or prep notice will remain under the 1996 rules, as well as any completed EIS for supplemental EIS purposes.	
	Significance Criteria	Include sea level rise based upon the best available scientific data in deciding whether to exempt something.	§ 11-200.1-13	The significance criteria include the sea level rise exposure area as a reason to not allow an exemption or to require an EIS. All impacts analyzed in an EA or EIS should be based upon the best available scientific data.	
Jim Buika	General	Nothing is defined. Need a prescriptive analysis of the environmental process drainage, what do you need, how do you do it--a checklist.	n/a	The Proposed Rules already include definitions for those terms that are necessary. The rules act as a checklist.	
	Significance Criteria	For archaeology, you cannot say culture resources and archaeology, you need to go to SHPD and have a long, 2-3 pages of checklists.	§ 11-200.1-13	HRS Chapter 343 is structured around checklists. Other jurisdictions treat EAs as checklists but Hawaii's process is not currently structured this way. It is unclear if statutory changes would be needed for that.	
	Significance Criteria	For shoreline, the views, rules need to describe the analysis, what you need. There needs to be more guidance on what is required due to the lawsuits challenging the sufficiency of documents.	§ 11-200.1-13	The Proposed Rules and new guidance that will be issued by OEQC are intended to provide the necessary guidance.	

Name	General Topic	Specific Comment	Rules Section	PIG Discussion	Language Draft
	Significance Criteria	Wants 5 pages of mitigation measure and what is meant by mitigation measures, including a detail of every step, not a summary description of the affected environment.	§ 11-200.1-13	The mitigation hierarchy is expressed in §11-200.1-24(p), which states that "the draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts". This language mostly mirrors the NEPA language in 40 CFR 1508.20 - Mitigation.	
	n/a	Wants a list of every certified citizen group in the state.	n/a	Neither the Council nor OEQC keeps this information. Unclear what type of certification this commenter is referring to. Citizen groups do not need to be certified in order to participate in the 343 process.	
	n/a	Include a list of every single agency and where to find their regulations and contact information.	n/a	This information can be found on hawaii.gov for all state agencies. Each county also has its own websites with this information.	
	General	Lots of procedural information in the rules but wants more than a general description of the guts of the EIS. Rules need to be prescriptive.	n/a	The Proposed Rules address both the process of completing a Chapter 343 document as well as setting forth its substantive requirements. Not all 343 documents will look the same and will change based on the particular project and area in which a project is proposed. The Proposed Rules allow for flexibility to address specific circumstances.	
	n/a	The EIS process is killing the environment because you cannot do anything on the shoreline. What agency should I report condos falling into the ocean? That information should be in the rules.	n/a	HRS Chapter 343, and the existing and Proposed Rules are not intended to address this.	
	Significance Criteria	EIS must be prescriptive in detail, must address archaeology, drainage, view plane, shoreline access, runoff sediment.	§ 11-200.1-13	The environmental review process is not prescriptive. It is an information disclosure document that incorporates public feedback. It is not a permit like an SMA or Conservation District Use Permit. Much of an EA or EIS is tied to the potential for impact.	
	n/a	There are no shorelines that have local people living there. We've lost a lot of views due to development. Need more prescriptive view plane regulations. Grading should be allowed to bring down the grade and vegetation so as not to block views along the highway.	n/a	The environmental review process is not prescriptive. It is an information disclosure document that incorporates public feedback. It is not a permit like an SMA or Conservation District Use Permit. Much of an EA or EIS is tied to the potential for impact.	
	Definitions	Define social impacts, what happens to the watershed, reefs offshore.	§ 11-200.1-2	The PIG recommends not defining any particular impacts as the specific impacts of actions will vary greatly depending on the specific project and project location. The Proposed Rules require that impacts to affected resources, including those suggested by this comment, be addressed in the document.	
		When someone does an EA or EIS, it should be a guide.	n/a	PIG believes the Proposed Rules provide the necessary guidance.	
	Definitions	Social welfare, culture, and cultural practices should also be defined.	§ 11-200.1-2	The Environmental Council is not defining these terms. The State Constitution and State Legislature have declined to define the terms. However, it is not the place of the Council to defines these terms for everyone.	
	Definitions	The definition of cumulative impact needs to be more prescriptive.	§ 11-200.1-2	The PIG discussed staying with existing language.	
	Challenges	Rules need to be lawsuit proof.	n/a	HRS Chapter 343 relies on citizen suits to enforce its provisions. The rules encourage proposing agencies and applicants to make good faith efforts at public engagement and that the documents should not be self-serving advertisements.	
	n/a	Need an e-permit system.	n/a	Chapter 343 and the Proposed Rules do not authorize any particular permits, therefore addressing an e-permitting system through the Proposed Rules is unnecessary.	