

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 O‘ahu, Maui, and Hawai‘i, and one each on Moloka‘i, Lana‘i, and Kaua‘i. Oral testimony was taken at each of these meetings, except at the Hawai‘i 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 Hawai‘i 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 Moloka‘i hearing, the company was unable to transcribe one of the oral comments. OEQC approached another company who was also unable to transcribe the Moloka‘i 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 or 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) ~~[Detrimentially 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 [tø] 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**;~~
 - (21) Alternatives requiring **actions** of a significantly different nature [which] **that** would provide similar benefits with different environmental **impacts**;
 - (32) 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]~~
 - (53) 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~~, ~~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.

- (fd) 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.
- (gh) 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.