

DRAFT  
HAWAII ADMINISTRATIVE RULES  
TITLE 11  
DEPARTMENT OF HEALTH  
CHAPTER 200  
ENVIRONMENTAL IMPACT STATEMENT RULES

ENVIRONMENTAL COUNCIL RULES UPDATE  
2011-2012

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1 **Introduction**

2 The Environmental Council is charged in Hawaii Revised Statutes  
3 (HRS) Chapter 343 to promulgate rules for the EIS process. It states,  
4 in part: "After consultation with the affected agencies, the council  
5 shall adopt, amend, or repeal necessary rules for the purposes of this  
6 chapter" (HRS §343-6). The Hawaii State Supreme Court concluded in its  
7 2010 decision, *Unite Here! Local 5 v. City and County of Honolulu*  
8 (*Turtle Bay*) that the Environmental Council may promulgate rules  
9 beyond the nine categories enumerated in HRS §343-6. The Rules  
10 Committee notes that amendments to HAR 11-200 are bound by Chapter  
11 343, HRS, and standing legal decisions of the Hawaii State Supreme  
12 Court and Intermediate Court of Appeals.

13 Chapter 343, HRS, is implemented in Hawaii Administrative Rules  
14 (HAR) §11-200, Environmental Impact Statement Rules.

15 The Environmental Council intends to conduct multiple rounds of  
16 draft language and gathering agency and public feedback. This document  
17 is the first round. It is a preliminary draft of proposed language to  
18 stimulate discussion and feedback from agencies and the public in  
19 order to develop robust consensus on how to update the rules and  
20 appropriate language. The Rules Committee seeks feedback from agencies  
21 and the public on the proposed language, the reasoning supporting the  
22 proposed language, alternative approaches, and alternative language.  
23 To help the Rules Committee organize feedback, it has prepared a  
24 Comment Matrix in Excel for entering comments by page and line number.  
25 This Comment Matrix can be downloaded from the OEQC SharePoint site<sup>1</sup>.

26 The Environmental Council last conducted a comprehensive update  
27 of HAR 11-200 in 1996. In the 16 years since, numerous events affected  
28 legal interpretation and practice. As examples, in 2000, the State  
29 Legislature enacted Act 50 (2000) requiring the inclusion of cultural  
30 impacts in EAs and EISs. In 2012, the State Legislature enacted Act  
31 172, which allows agencies to directly prepare an EIS instead of  
32 preparing an EA first. Act 172 (2012) brings the law into alignment  
33 with the practice of private applicants preparing their own documents  
34 instead of agencies preparing documents on an applicant's behalf. The  
35 Legislature also enacted Act 312 (2012), which exempts secondary  
36 actions involving certain types of infrastructure within the highway  
37 or public right-of-way from Chapter 343, HRS.

38 A series of State Supreme Court and Intermediate Court of Appeals  
39 decisions have influenced the practice and implementation of Chapter  
40 343, HRS; notably:

- 41 • *Kahana Sunset* (1997),  
42 • *North Kahala* (1999),

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<sup>1</sup> <http://oeqc.doh.hawaii.gov/default.aspx>

- 1 • *Koa Ridge* (2006),
- 2 • *Superferry* (2007),
- 3 • *Nuuanu Valley* (2008),
- 4 • *Ohana Pale* (2008), and, most recently,
- 5 • *Turtle Bay* (2010).

6 The Environmental Council found that these evolutions in law and  
7 practice necessitate an update to HAR 11-200. Therefore, it voted  
8 unanimously in August 2011 to initiate an update to the administrative  
9 rules. The Council sent a letter to all state and county agencies to  
10 alert them to this endeavor. It requested they designate a point of  
11 contact and notify the Council of their primary concerns regarding the  
12 EIS process. The Council directed its Rules Committee to prepare draft  
13 language and a process for obtaining public input in its proposal.

14 The Rules Committee held a series of meetings to begin scoping  
15 the nature of issues to be addressed. It developed a list of priority  
16 issues based on input from agencies and prior experience with the EIS  
17 process. One meeting held on the role of supplemental EISs and public  
18 commenting had about 30 people in attendance. The Rules Committee has  
19 taken this feedback into account in developing this initial draft.

20 The Rules Committee has requested the Exemption Committee to  
21 develop proposed language for the exemptions process because this is  
22 its subject matter expertise. The Exemption Committee is developing  
23 its recommendations, which are anticipated to be ready by the next  
24 draft release.

25 In consideration of previous Councils' efforts on developing  
26 rules, the Rules Committee has included many of their recommended  
27 changes. These are identified by "*Previous Council recommendation.*"  
28 The present Rules Committee does not necessarily endorse these  
29 recommendations, but believes their prior hard work deserves  
30 recognition and discussion in the preliminary draft.

31 Please note that referenced section numbers or paragraphs may  
32 have changed due to amendments to the sections. Unless otherwise  
33 edited, assume that the referenced number refers to the original  
34 section numbers as if no amendment had been made. For example, the  
35 paragraph letters in § 11-200-25, National Environmental Policy Act  
36 Actions: Applicability to Chapter 343, HRS, have been revised. In the  
37 original, there are four paragraphs, A through D. In this draft  
38 version, there are now seven paragraphs, A through G. Roughly, A in  
39 the original corresponds to A in this draft, but B in the original  
40 corresponds to D in this draft, C to F, and D to G (A→A, B→D, C→F,  
41 and D→G). Thus, if an unchanged section of the text were to reference  
42 § 11-200-25(B), in effect it is referencing § 11-200-25(D), as  
43 amended.  
44

## Priority Issues

The Rules Committee determined through agency consultation that resolution of the following are of particular concern for any update of the administrative rules. Not all issues have been addressed in the present draft, but will be in future drafts, along with explanations of each issue.

- Cultural impacts
- Supplemental documents
- Programmatic EAs and EISs
- NEPA/HEPA joint documents
- Agency and public comments
- "Direct to EIS" pathway
- Submission requirements
- Exemption determinations
- "Voluntary" EAs and EISs
- Document length
- Modernizing the process (digital/electronic documents/distribution)

## List of Keywords

1  
2 Keywords are intended to facilitate searching the document for key  
3 issues. Each endnote is accompanied by relevant keywords. Search for  
4 the keyword, including the period, and the results will indicate where  
5 in the document changes have been proposed involving that keyword.  
6  
7 Acceptance.  
8 Alternatives Analysis.  
9 Appeals.  
10 Approving Agency.  
11 Bulletin.  
12 Commenting.  
13 Council.  
14 Cultural Impacts.  
15 Cumulative Impacts.  
16 Definitions.  
17 Direct-to-EIS.  
18 EA Content.  
19 EISPN.  
20 Exemptions.  
21 General Edits.  
22 Housekeeping.  
23 Impacts.  
24 Joint HEPA-NEPA.  
25 Modernization.  
26 OEQC.  
27 Planning.  
28 Preparation.  
29 Previous Council recommendation.  
30 Public Outreach.  
31 Public Review.  
32 Segmentation.  
33 Significance Determination.  
34 Supplementals.  
35 Time Limit.  
36 Triggers.

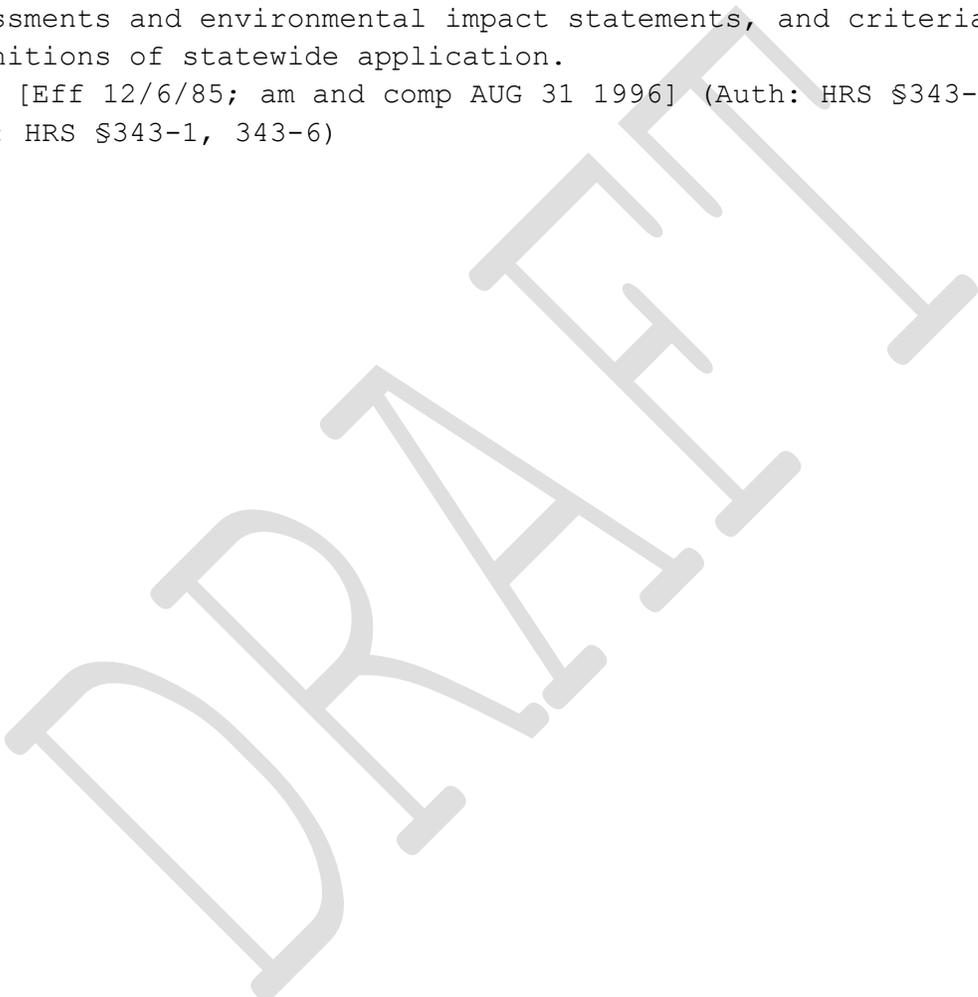
1           **Subchapter 1 Purpose**

2           §11-200-1     Purpose

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

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

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<sup>1</sup> Housekeeping. Previous Council recommendation.

<sup>2</sup> Housekeeping. Previous Council recommendation.

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## Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

As used in this chapter:

"Acceptance" means a formal determination ~~of acceptability~~<sup>3</sup> that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement (EIS)<sup>4</sup>, ~~adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement,~~ as prescribed by section 11-200-23.<sup>5</sup>

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 the ~~final~~ official who or agency that determines the acceptability of the EIS document makes the final determination that a statement required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an EIS.<sup>6</sup>

"Action" means any program or project to be initiated by an agency or applicant.<sup>7</sup>

"Addendum" means an attachment to a draft environmental assessment or draft ~~environmental impact statement~~ EIS<sup>8</sup>, prepared at the discretion of the proposing agency or approving agency, and distinct from a supplemental 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 or the draft ~~environmental impact statement~~ EIS<sup>9</sup> already filed with the office.

"Agency" means any department, office, board, or commission of the state or county government ~~which~~ that<sup>10</sup> is part of the executive branch of that government.

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

"Approval" means a discretionary consent required from an agency prior to ~~actual~~<sup>11</sup> 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.~~<sup>12</sup>

"Approving agency" means an agency that issues an approval prior to ~~actual~~<sup>13</sup> implementation of an action and determines the need for an

1 environmental assessment or an EIS. The approving agency may also be  
2 an accepting authority for an applicant's final EIS<sup>14</sup>.

3 "Concurrence" means the discretionary consent of the council to  
4 an agency exemption list.<sup>15</sup>

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

6 "<sup>16</sup>Cumulative impact" means the impact on the environment ~~which~~  
7 that<sup>17</sup> results from the incremental impact of the action when added to  
8 other past, present, and reasonably foreseeable future actions  
9 regardless of what agency or person undertakes such other actions.  
10 Cumulative impacts can result from individually minor but collectively  
11 significant actions taking place over a period of time.

12 "Discretionary consent" means a consent, sanction, or  
13 recommendation from an agency for which judgment and free will may be  
14 exercised by the issuing agency, as distinguished from a ministerial  
15 consent. Ministerial consent means a consent, sanction, or  
16 recommendation from an agency upon a given set of facts, as prescribed  
17 by law or rule without the use of judgment or discretion.<sup>18</sup>

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

22 "Effects" or "impacts" as used in this chapter are synonymous.  
23 Effects may include ecological effects (such as the effects on natural  
24 resources and on the components, structures, and functioning of  
25 affected ecosystems), aesthetic effects, historic effects, cultural  
26 effects, economic effects, social effects, or health effects, whether  
27 primary, secondary, or cumulative. Effects may also include those  
28 effects resulting from actions ~~which~~ that<sup>20</sup> may have both beneficial  
29 and detrimental effects, even if on balance the agency believes that  
30 the effect will be beneficial.

31 "Emergency action" means an action to prevent or mitigate loss or  
32 damage to life, health, property, or essential public services in  
33 response to a sudden unexpected occurrence demanding such immediate  
34 action.

35 "Environment" means humanity's surroundings, inclusive of all the  
36 physical, economic, cultural, and social conditions that exist within  
37 the area affected by a proposed action, including land, human and  
38 animal communities, air, water, minerals, flora, fauna, ambient noise,  
39 and objects of historic or aesthetic significance.

40 "Environmental assessment" means a concise written evaluation to  
41 determine whether an action may have a significant environmental  
42 effect. It aids compliance with chapter 343, HRS, when no EIS is  
43 necessary and facilitates preparation of an EIS when one is  
44 necessary.<sup>21</sup>

1 "Environmental impact" means an effect of any kind, whether  
2 immediate or delayed, on any component of the environment.

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

13 "Exempt classes of action" means exceptions from the requirements  
14 of chapter 343, HRS, to prepare environmental assessments, for a class  
15 of actions, based on a determination by the proposing agency or  
16 approving agency, with the concurrence of the council,<sup>27</sup> that the class  
17 of actions, individually and cumulatively,<sup>28</sup> will probably have a  
18 minimal or no significant effect on the environment.

19 "Exemption ~~notice~~ declaration<sup>29</sup>" means a brief ~~notice~~ written  
20 statement<sup>30</sup> kept on file by the proposing agency, in the case of a  
21 public action, or the agency with the power of approval, in the case  
22 of a private action, when it has determined that the proposed project  
23 is an exempt or emergency project.

24 "Exemption list" means a document summarizing and listing  
25 regularly performed agency actions that, individually and  
26 cumulatively, will have minimal or no significant effect on the  
27 environment and therefore are exempt from and may be performed without  
28 first preparing an environmental assessment.<sup>31</sup>

29 "<sup>32</sup>Final environmental assessment" means either the environmental  
30 assessment submitted by a proposing agency or an approving agency  
31 following the public review and comment period for the draft  
32 environmental assessment and in support of either a ~~negative~~  
33 declaration FONSI<sup>33</sup> or an EISPN determination; or the environmental  
34 ~~assessment submitted by a proposing agency or an approving agency~~  
35 ~~subject to a public consultation period when such an agency clearly~~  
36 ~~determines at the outset that the proposed action may have a~~  
37 ~~significant effect and hence will require the preparation of a~~  
38 ~~statement.~~<sup>34</sup>

39 "Finding of no significant impact"<sup>35</sup> or "FONSI" means a  
40 determination by an agency based on an environmental assessment that  
41 an action not otherwise exempt does not have the potential for<sup>36</sup> a  
42 significant effect on the environment and therefore does not require  
43 the preparation of an EIS. A FONSI is required prior to implementing  
44 or approving the action.

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

3 "Land" has the same meaning as defined in section 171-1, HRS.<sup>37</sup>

4 "National Environmental Policy Act" or "NEPA"<sup>38</sup> means the National  
5 Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. §4321-  
6 4347, as amended.

7 ~~"Negative declaration" or "finding of no significant impact"~~  
8 ~~means a determination by an agency based on an environmental~~  
9 ~~assessment that a given action not otherwise exempt does not have a~~  
10 ~~significant effect on the environment and therefore does not require~~  
11 ~~the preparation of an EIS. A negative declaration is required prior to~~  
12 ~~implementing or approving the action.~~<sup>39</sup>

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

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

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

19 "Power generating facility" means:

20 A. A new, fossil-fueled, electricity-generating facility, where  
21 the electrical output rating of the new equipment exceeds 5.0  
22 megawatts; or

23 B. An expansion in generating capacity of an existing, fossil-  
24 fueled, electricity-generating facility, where the incremental  
25 electrical output rating of the new equipment exceeds 5.0  
26 megawatts.<sup>40</sup>

27 "Preparation notice," ~~or~~ "EIS preparation notice," or "EISPN"<sup>41</sup>  
28 means a determination based on either an environmental assessment or  
29 an agency's judgment and experience<sup>42</sup> that the subject action may have  
30 a significant effect on the environment and, therefore, will require  
31 the preparation of an environmental impact statement EIS<sup>43</sup>.

32 "Primary impact," ~~or~~ "primary effect," ~~or~~ "direct impact,"<sup>44</sup> or  
33 "direct effect" means effects which that<sup>45</sup> are caused by the action and  
34 occur at the same time and place.

35 "Renewable energy facility" has the same meaning as defined in  
36 section 201N-1, HRS.<sup>46</sup>

37 "Secondary impact," ~~or~~ "secondary effect," ~~or~~ "indirect impact,"<sup>47</sup>  
38 or "indirect effect" means effects which that<sup>48</sup> are caused by the  
39 action and are later in time or farther removed in distance, but are  
40 still reasonably foreseeable. Indirect effects may include growth-  
41 inducing<sup>49</sup> effects and other effects related to induced changes in the  
42 pattern of land use, population density or growth rate, and related  
43 effects on air, and water,<sup>50</sup> and other natural systems, including  
44 ecosystems.

1 "Significant effect" or "significant impact" means the sum of  
 2 effects on the quality of the environment, including actions that  
 3 irrevocably commit a natural resource, curtail the range of beneficial  
 4 uses of the environment, are contrary to the ~~state's~~ State's<sup>51</sup>  
 5 environmental policies or long-term environmental goals and guidelines  
 6 as established by law, ~~or~~<sup>52</sup> adversely affect the economic or social  
 7 welfare, or are otherwise set forth in section 11-200-12 ~~of this~~  
 8 ~~chapter~~<sup>53</sup>.

9 "State lands" has the same meaning as defined in section 182-1,  
 10 HRS.<sup>54</sup>

11 "Supplemental statement" means an additional ~~environmental impact~~  
 12 ~~statement~~ EIS<sup>55</sup> prepared for an action for which a statement was  
 13 previously accepted, but which has since changed substantively in  
 14 size, scope, intensity, use, location, or timing, among other things.

15 "Wastewater treatment unit" means any plant or facility used in  
 16 the treatment of wastewater.<sup>56</sup>

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

3 *Housekeeping. Definitions.*  
 Redundant language.

4 *Housekeeping. Definitions. Previous Council recommendation.*

5 *Housekeeping. Definitions. Acceptance.*

Redundant language containing a subset of the requirements for an EIS. Removed to  
 reduce uncertainty that other EIS sections may not apply because they are omitted  
 in the definition. Connected the definition to HAR §11-200-23, Acceptability.

6 *Definitions. Acceptance. Approving Authority.*

Rephrased language to add clarity to the definition.

Note: The term "accepting authority" is often confused with "approving agency," but  
 each has a specific meaning. The confusion arises in two places. One, the governor  
 or a county mayor accepts an EIS for a state agency or its respective county  
 agency, while the agency responsible for the approval (e.g., permit) accepts the  
 EIS for an applicant. Another is that, for environmental assessments, an agency  
 accepts the applicant's environmental assessment, as well as its own, and be the  
 approving agency for another agency's proposal action.

One proposal to clarify this is to replace the term "accepting authority" with the  
 term "accepting entity" that distinguishes the two by removing the implicit  
 connection between authority and approving. The Rules Committee has not introduced  
 it into the text because it would require revisions throughout the document, but  
 seeks feedback on suggestions to resolve the confusion in terms.

7 *Triggers.*

One suggestion is to change the term "action" to "proposed action" to provide more  
 specificity because HRS Chapter 343 does not apply to actions, but to proposed  
 actions.

8 *Housekeeping. Definitions. Previous Council recommendation.*

9 *Housekeeping. Definitions. Previous Council recommendation.*

10 *Housekeeping. Definitions. Previous Council recommendation.*

11 *Housekeeping. Definitions.*

Unnecessary language.

12 *Housekeeping. Definitions.*

Moved down to make "discretionary consent" its own definition, distinct from the  
 term "approval."

13 *Housekeeping. Definitions.*

- Unnecessary language.
- 14 *Definitions. Acceptance. Approving Authority.*
- 15 *Exemptions. Definitions. Previous Council recommendation.*
- 16 *General Edit. Definitions.*
- Typo in original or just online version? Added opening quotation mark.
- 17 *Housekeeping. Definitions. Previous Council recommendation.*
- 18 *Housekeeping. Definitions. Previous Council recommendation.*
- 19 *General Edit. Definitions.*
- Replace negative declaration with FONSI to mirror language in HRS 343.
- 20 *Housekeeping. Definitions. Previous Council recommendation.*
- 21 *Definitions.*
- Language is drawn from 40 CFR 1508.9. It is meant to clarify the purpose and role of the EA. Source: <http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.9>
- "Environmental assessment":
- (a) Means a concise public document for which a Federal agency is responsible that serves to:
    1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
    2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
    3. Facilitate preparation of a statement when one is necessary.
  - (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.
- 22 *Housekeeping. Definitions. Previous Council recommendation.*
- 23 *Housekeeping. Definitions. Previous Council recommendation.*
- 24 *Housekeeping. Definitions. Previous Council recommendation.*
- 25 *Housekeeping. Definitions. Previous Council recommendation.*
- 26 *Housekeeping. Definitions.*
- Unnecessary language.
- 27 *Exemptions. Definitions. Council.*
- Clarifies the role of the Council in exempt classes of action.
- 28 *Exemptions. Definitions. Cumulative Impacts.*
- Language is drawn from 40 CFR 1508.9. It is meant to clarify the cumulative impacts should also be considered granting an exemption. Source: <http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.4>
- "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.
- 29 *Exemptions. Definitions. Previous Council recommendation.*
- 30 *Exemptions. Definitions. Previous Council recommendation.*
- 31 *Exemptions. Definitions. Cumulative Impacts. Previous Council recommendation.*
- "Individually and cumulatively" is drawn from 40 CFR 1508.9. It is meant to clarify the cumulative impacts should also be considered granting an exemption. Source: <http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.4>
- "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.
- 32 *General Edit. Definitions.*
- Typo in original or just online version? Added opening quotation mark.
- 33 *General Edit. Definitions.*
- Replace negative declaration with FONSI to mirror language in HRS 343.
- 34 *Definitions. Direct-to-EIS.*
- Deleted to make consistent with Act 172 (2012).
- 35 *Housekeeping. Definitions.*

Moves the language for the deleted "Negative declaration" into alphabetical order under "Finding of no significant impact."

36 *Definitions. Significance Determination.*

The threshold for requiring an EIS is the potential for significant effect, therefore the FONSI should be issued on the absence of the potential for significant effect.

37 *Triggers. Definitions.*

Add clarity to the meaning of "land" by incorporating Department of Land and Natural Resources' definition.

HRS 171-1: "Land" includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided.

38 *Joint HEPA-NEPA. Definitions.*

39 *Housekeeping. Definitions.*

Moves the language for the deleted "Negative declaration" into alphabetical order under "Finding of no significant impact."

40 *Triggers. Housekeeping. Definitions.*

Language adopted directly from HRS 343-2. "Waste-to-energy" does not appear to have a definition in HRS.

41 *Housekeeping. Definitions.*

42 *Direct-to-EIS. Definitions.*

Adopts language in Act 172 (2012) that allows an agency based on its judgment and experience to choose not to prepare an EA and instead prepare an EIS, beginning with an EISPN.

43 *Housekeeping. Definitions. Previous Council recommendation.*

44 *Housekeeping. Definitions. Previous Council recommendation.*

45 *Housekeeping. Definitions. Previous Council recommendation.*

46 *Triggers. Housekeeping. Definitions.*

Language adopted directly from HRS 343-2. HRS 201N-1 definition:

"Renewable energy facility" or "facility" means a new facility located in the State with the capacity to produce from renewable energy at least two hundred megawatts of electricity; provided that an electricity production facility with a capability between five megawatts and one hundred ninety-nine megawatts of electricity and a biofuel production facility or distribution infrastructure with a capacity to produce or distribute one hundred thousand gallons or more annually may apply to the coordinator for designation as a renewable energy facility. The term includes any of the following associated with the initial permitting and construction of the facility:

- (1) The land parcel on which the facility is situated;
- (2) Any renewable energy production structure or equipment;
- (3) Any energy transmission line from the facility to a public utility's electricity transmission or distribution system;
- (4) Any on-site infrastructure; and
- (5) Any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site, transmission of the electricity or biofuel, or any accommodation for employees of the facility.

47 *Housekeeping. Definitions. Previous Council recommendation.*

48 *Housekeeping. Definitions. Previous Council recommendation.*

49 *Housekeeping. Definitions. Previous Council recommendation.*

50 *Housekeeping. Definitions. Previous Council recommendation.*

51 *Housekeeping. Definitions. Previous Council recommendation.*

52 *Housekeeping. Definitions. Previous Council recommendation.*

53 *Housekeeping. Definitions. Previous Council recommendation.*

54 *Triggers. Definitions.*

Add clarity to the meaning of "state lands" by incorporating Department of Land and Natural Resources' definition of "state land."

HRS 182-1: "State lands" includes all public and other lands owned or in possession, use and control of the then Territory of Hawaii or the State of Hawaii, or any of its agencies and this chapter shall apply thereto.

55 *Housekeeping. Definitions. Previous Council recommendation.*

56 *Triggers. Housekeeping. Definitions. Previous Council recommendation.*

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1           **Subchapter 3 Periodic Bulletin**

2           §11-200-3     Periodic Bulletin

- 3           A. The office shall inform the public through the publication of  
4           a periodic bulletin of the following:
- 5                 1. Notices filed by agencies of the availability of  
6                     environmental assessments and appropriate addendum  
7                     documents for review and comments;
  - 8                 2. Notices filed by agencies of determinations that  
9                     statements are required or not required;
  - 10                3. The availability of statements, supplemental statements  
11                   and appropriate addendum documents for review and  
12                   comments;
  - 13                4. The acceptance or non-acceptance of statements; and
  - 14                5. Other notices required by the rules of the council.
- 15           B. The bulletin shall be made available to any person upon  
16           request. Copies of the bulletin shall also be sent to the  
17           state library system and, at the office's discretion,<sup>57</sup> other  
18           depositories or clearinghouses.
- 19           C. The bulletin shall be issued on the eighth and twenty-third  
20           days of each month. All agencies and applicants submitting  
21           draft environmental assessments, ~~negative declarations~~  
22           FONISs<sup>58</sup>, ~~preparation notices~~ EISPNS<sup>59</sup>, ~~environmental impact~~  
23           ~~statements~~ EISS<sup>60</sup>, acceptance or nonacceptance determinations,  
24           addenda, supplemental statements, supplemental preparation  
25           notices, ~~revised documents,~~<sup>61</sup> withdrawals, and other notices  
26           required to be published in the bulletin shall submit such  
27           documents or notices to the office before the close of  
28           business eight working days prior to the issue date. In case  
29           the deadline falls on a state holiday or nonworking day, the  
30           deadline shall be the next working day.
- 31           D. All submittals to the office for publication in the bulletin  
32           shall be accompanied by a completed informational form ~~which~~  
33           that<sup>62</sup> provides whatever information the office needs to  
34           properly notify the public. The information requested may  
35           include the following: the title of the action; the islands  
36           affected by the proposed action; tax map key numbers; street  
37           addresses; nearest geographical landmarks; latitudinal and  
38           longitudinal coordinates; whether the proposed action is an  
39           agency or an applicant action; a citation of the applicable  
40           federal or state statutes requiring preparation of the  
41           document; the type of document prepared; the names, addresses  
42           and contact persons as applicable of the accepting authority,  
43           the proposing agency, the approving agency, the applicant, and

1 the consultant; and a brief narrative summary of the proposed  
 2 action ~~which~~ that<sup>63</sup> provides sufficient detail to convey the  
 3 full impact of the proposed action to the public.

4 E. The office may provide recommendations to the agency  
 5 responsible for the environmental assessment or EIS regarding  
 6 any applicable administrative content requirements set forth  
 7 in this chapter.

8 F. The office may, on a space available basis, publish other  
 9 notices not specifically related to chapter 343, HRS.

10  
 11 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §341-3, 343-5,  
 12 343-6) (Imp: HRS §341-3, 343-3, 343-6)

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<sup>57</sup> *OEQC. Previous Council recommendation. Bulletin.*  
 Minimize burden of distributing physical copies of the bulletin.  
<sup>58</sup> *General Edit.*  
 Replace negative declaration with FONSI to mirror language in HRS 343.  
<sup>59</sup> *Housekeeping.*  
<sup>60</sup> *Housekeeping. Previous Council recommendation.*  
<sup>61</sup> *Preparation.*  
 There is no formal "revised document" in HAR 11-200. A revised document would be an  
 addendum.  
<sup>62</sup> *Housekeeping. Previous Council recommendation.*  
<sup>63</sup> *Housekeeping. Previous Council recommendation.*

1           **Subchapter 4 Responsibilities**

2           §11-200-4       Identification of Accepting Authority

3           A. Whenever an agency proposes an action, the final authority to  
4           accept a statement shall rest with:5               1. The governor, or an authorized representative, whenever  
6               an action proposes the use of state lands or the use of  
7               state funds or, whenever a state agency proposes an  
8               action within section 11-200-6(b); or9               2. The mayor, or an authorized representative, of the  
10              respective county whenever an action proposes only the  
11              use of county lands or county funds.12           B. Whenever an applicant proposes an action, the authority for  
13           requiring statements and for accepting any required statements  
14           that have been prepared shall rest with the agency initially  
15           receiving and agreeing to process the request for an approval.  
16           In the event that there is more than one agency that has  
17           jurisdiction over the action, and these agencies are unable to  
18           agree as to which agency has the responsibility for complying  
19           with section 343-5(c), HRS, the office, after consultation  
20           with the agencies involved, shall determine which agency is  
21           responsible. In making the determination, the office shall  
22           take into consideration, ~~including, but not limited to, the~~  
23           ~~following factors~~<sup>64</sup>:

- 24               1. The agency with the greatest responsibility for
- 
- 25               supervising or approving the action as a whole;
- 
- 26               2. The agency that can most adequately fulfill the
- 
- 27               requirements of chapter 343, HRS, and this chapter;
- 
- 28               3. The agency that has special expertise or
- greatest
- <sup>65</sup>
- 
- 29               access to information; and
- 
- 30               4. The extent of participation of each agency in the
- 
- 31               action.

32  
33           [Eff 12/6/85; am and Comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
34           (Imp: HRS §343-5, 343-6)35  
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<sup>64</sup> *Housekeeping. Previous Council recommendation.*

<sup>65</sup> *Housekeeping. Previous Council recommendation.*

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1           **Subchapter 5 Applicability**

2           §11-200-5     Agency Actions

- 3           A. For all proposed actions ~~which~~ that<sup>66</sup> are not exempt as defined  
4           in section 11-200-8, the agency shall assess at the earliest  
5           practicable time<sup>67</sup> the significance of potential impacts of its  
6           actions, including the overall, cumulative impact in light of  
7           ~~related~~ past, present, and reasonably foreseeable<sup>68</sup> actions in  
8           the ~~region and further actions contemplated~~ affected area<sup>69</sup>.
- 9           B. The applicability of chapter 343, HRS, to specific agency  
10          proposed actions is ~~conditioned~~ triggered<sup>70</sup> by the agency's  
11          proposed use of state or county lands or funds. Therefore,  
12          when an agency proposes to implement an action to use state or  
13          county lands or funds, it shall be subject to the provisions  
14          of chapter 343, HRS, and this chapter.
- 15          C. Use of state or county funds shall include any form of funding  
16          assistance flowing from the State or county, and use of state  
17          or county lands includes any use (title, lease, permit,  
18          easement, licenses, etc.) or entitlement to those lands.
- 19          D. For agency actions, chapter 343, HRS, exempts from  
20          applicability any feasibility or planning study for possible  
21          future programs or projects ~~which~~ that<sup>71</sup> the agency has not  
22          approved, adopted, or funded. Nevertheless, if an agency is  
23          studying the feasibility of a proposal, it shall consider  
24          environmental factors and available alternatives and disclose  
25          these in any future assessment or subsequent statement. If,  
26          however, the planning and feasibility studies involve testing  
27          or other actions ~~which~~ that<sup>72</sup> may have a significant impact on  
28          the environment, then an environmental assessment or EIS<sup>73</sup>  
29          shall be prepared.
- 30          E. Any amendment to existing county general plans, however  
31          denominated, which may include but not be limited to  
32          development plans, or community plans, where the amendment  
33          would result in designations other than agriculture,  
34          conservation, or preservation requires an environmental  
35          assessment or EIS<sup>74</sup>. (Actions by a county initiating a  
36          comprehensive review toward effectuating either a general plan  
37          or amendment thereof may be excepted. General plan amendments  
38          requested by a private owner or developer outside of the  
39          comprehensive review process are not excepted.)

40

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

42                   (Imp: HRS §343-5(b), 343-6)

43

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<sup>66</sup> *Housekeeping. Previous Council recommendation.*

<sup>67</sup> *Public Outreach.*

The phrase "at the earliest practicable time" can cause uncertainty for agencies and applicants. More guidance may be needed for this phrase to clarify when a proposal becomes "practical."

<sup>68</sup> *Cumulative Impacts.*

Clarifies what "related" actions means. Language is incorporated from 40 CFR 1508.7. Source: <http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.7>

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

<sup>69</sup> *General Edit. Cumulative Impacts.*

Removed wordiness. The addition of "reasonably foreseeable" captures the idea of "further actions contemplated."

<sup>70</sup> *General Edit. Triggers.*

"Triggered" is the word used in common discussion.

<sup>71</sup> *Housekeeping. Previous Council recommendation.*

<sup>72</sup> *Housekeeping. Previous Council recommendation.*

<sup>73</sup> *Direct-to-EIS.*

<sup>74</sup> *Direct-to-EIS.*

1 S11-200-6 Applicant Actions

2 A. Chapter 343, HRS, shall apply to persons who are required to  
3 obtain an agency approval prior to proceeding with:

- 4 1. Implementing actions ~~which~~ that<sup>75</sup> are either located in  
5 certain specified areas; or  
6 2. Actions that require certain types of amendments to  
7 existing county general plans.

8 B. Chapter 343, HRS, establishes certain categories of action  
9 ~~which~~ that<sup>76</sup> require the agency processing an applicant's  
10 request for approval to prepare an environmental assessment.  
11 There are ~~seven~~ eight<sup>77</sup> geographical categories and two  
12 administrative categories.

13 1. The ~~seven~~ eight<sup>78</sup> geographical categories are:

- 14 a. The use of state or county lands;  
15 b. Any use within any land classified as  
16 conservation district by the state land use  
17 commission under chapter 205, HRS;  
18 c. Any use within the shoreline area as defined in  
19 section 205A-41, HRS;  
20 d. Any use within any historic site as designated in  
21 the ~~national register~~ National Register or Hawaii  
22 ~~register~~ Register of Historic Places<sup>79</sup>;  
23 e. Any use within the Waikiki area of Oahu, the  
24 boundaries of which are delineated in the land  
25 use ordinance as amended, establishing the  
26 "Waikiki Special District";  
27 f. Any reclassification of any land classified as  
28 conservation district by the state land use  
29 commission under chapter 205, HRS; and  
30 g. The construction of a new, or the expansion or  
31 modification of an existing, helicopter  
32 ~~facilities~~ facility<sup>80</sup> within the State ~~which~~  
33 that<sup>81</sup> by way of ~~their~~ its<sup>82</sup> activities may  
34 affect;<sup>83</sup> any land classified as conservation  
35 district by the state land use commission under  
36 chapter 205, HRS; the shoreline area as defined  
37 in section 205A-41, HRS; ~~or~~, any historic site as  
38 designated in the National Register or Hawaii  
39 Register of Historic Places<sup>84</sup> ~~as provided for in~~  
40 ~~the Historic Preservation Act of 1966, Public Law~~  
41 ~~98-665, or chapter 6E, HRS~~<sup>85</sup>; or, until the  
42 statewide historic places inventory is completed,  
43 any historic site found by a field reconnaissance  
44 of the area affected by the helicopter facility  
45 and ~~which~~ that<sup>86</sup> is under consideration for

1 placement on the National Register or the Hawaii  
2 Register of Historic Places;<sup>87</sup>

3 h. The proposal, as defined in section 343-2, HRS,  
4 of any:

- 5 1. Wastewater treatment unit, except an  
6 individual wastewater system or a  
7 wastewater treatment unit serving fewer  
8 than fifty single-family dwellings or the  
9 equivalent. In compliance with the  
10 department of health rules on wastewater  
11 treatment systems, developments consisting  
12 of fifty or more individual wastewater  
13 systems (IWS) trigger compliance with  
14 chapter 343, HRS;
- 15 2. Waste-to-energy facility;<sup>88</sup>
- 16 3. Landfill;
- 17 4. Oil refinery; or
- 18 5. Power-generating facility.<sup>89</sup>

19 2. The two administrative categories are:

- 20 a. Any amendment to existing county general plans,  
21 however denominated, which may include, but are  
22 not be limited to, development plans,<sup>90</sup> or  
23 community plans, where the amendment would result  
24 in designations other than agriculture,  
25 conservation, or preservation. (Actions by a  
26 county initiating a comprehensive review toward  
27 effectuating either a general plan or amendment  
28 thereof may be excepted. General plan amendments  
29 request by a private owner or developer outside  
30 of the comprehensive review process are not  
31 excepted.); and
- 32 b. The use of state or county funds, other than  
33 funds to be used for feasibility or planning  
34 studies for possible future programs or projects  
35 which that<sup>91</sup> the agency has not approved,  
36 adopted, or funded, or funds to be used for the  
37 acquisition of unimproved real property; provided  
38 that the agency shall consider environmental  
39 factors and available alternatives in its  
40 feasibility or planning studies.

41  
42 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
43 (Imp: HRS §343-5, 343-6)  
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75 *Housekeeping. Previous Council recommendation.*

76 *Housekeeping. Previous Council recommendation.*

77 *Housekeeping. Previous Council recommendation.*

78 *Housekeeping. Previous Council recommendation.*

79 *Housekeeping. Triggers. Previous Council recommendation.*

Note: There are county-designated historic districts, but those are not included in Chapter 343-5(a). HAR cannot expand triggers beyond the scope of Chapter 343, so county-designated historic districts are not eligible for inclusion in HAR 11-200.

80 *Housekeeping. Previous Council recommendation.*

81 *Housekeeping. Previous Council recommendation.*

82 *Housekeeping. Previous Council recommendation.*

83 *Housekeeping. Previous Council recommendation.*

84 *Housekeeping. Previous Council recommendation.*

85 *Housekeeping. Previous Council recommendation.*

86 *Housekeeping. Previous Council recommendation.*

87 *Housekeeping. Previous Council recommendation.*

88 *Triggers.*

"Waste-to-energy" does not appear to have a definition in HRS.

89 *Triggers. Previous Council recommendation.*

90 *Housekeeping. Previous Council recommendation.*

91 *Housekeeping. Previous Council recommendation.*

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- 1           §11-200-7     Multiple or Phased Applicant or Agency Actions  
2           A group of actions proposed by an agency or an applicant shall be  
3 treated as a single action when:  
4           A. The component actions are phases or increments of a larger  
5           total undertaking;  
6           B. An individual project is a necessary precedent for a larger  
7           project;  
8           C. An individual project represents a commitment to a larger  
9           project; or  
10          D. The actions in question are essentially identical and a single  
11          statement will adequately address the impacts of each  
12          individual action and those of the group of actions as a  
13          whole.

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

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## 1 §11-200-8 Exempt Classes of Action

2 A. Chapter 343, HRS, states that a list of classes of actions  
3 shall be drawn up ~~which~~ that<sup>92</sup>, because they, individually and  
4 cumulatively,<sup>93</sup> will probably have minimal or no significant  
5 effect on the environment, may be declared exempt ~~by the~~  
6 ~~proposing agency or approving agency~~<sup>94</sup> from the preparation of  
7 an environmental assessment provided that agencies declaring  
8 an action exempt under this section shall obtain the advice of  
9 other outside agencies or individuals having jurisdiction or  
10 expertise as to the propriety of the exemption. Actions  
11 declared exempt from the preparation of an environmental  
12 assessment under this section are not exempt from complying  
13 with any other applicable statute or rule. The following list  
14 represents exempt classes of action:

- 15 1. Operations, repairs, or maintenance of existing  
16 structures, facilities, equipment, or topographical  
17 features, involving negligible or no expansion or change  
18 of use beyond that previously existing;
- 19 2. Replacement or reconstruction of existing structures and  
20 facilities where the new structure will be located  
21 generally on the same site and will have substantially  
22 the same purpose, capacity, density, height, and  
23 dimensions as the structure replaced;
- 24 3. Construction and location of single, new, small  
25 facilities or structures and the alteration and  
26 modification of the same and installation of new, small,  
27 equipment and facilities and the alteration and  
28 modification of the<sup>95</sup> same, including<sup>96</sup> but not limited  
29 to:
  - 30 a. Single-family residences less than 3,500 square  
31 feet not in conjunction with the building of two  
32 or more such units;
  - 33 b. Multi-unit structures designed for not more than  
34 four dwelling units if not in conjunction with  
35 the building of two or more such structures;
  - 36 c. Stores, offices, and restaurants designed for  
37 total occupant load of twenty persons or less per  
38 structure, if not in conjunction with the  
39 building of two or more such structures; and
  - 40 d. Water, sewage, electrical, gas, telephone, and  
41 other essential public utility services  
42 extensions to serve such structures or  
43 facilities; accessory or appurtenant structures  
44 including garages, carports, patios, swimming

- 1 pools, and fences; and, acquisition of utility  
2 easements;
- 3 4. Minor alterations in the conditions of land, water, or  
4 vegetation;
- 5 5. Basic data collection, research, experimental  
6 management, and resource evaluation activities ~~which~~  
7 that<sup>97</sup> do not result in a serious or major disturbance to  
8 an environmental resource;
- 9 6. Construction or placement of minor structures accessory  
10 to existing facilities;
- 11 7. Interior alterations involving things such as  
12 partitions, plumbing, and electrical conveyances;
- 13 8. Demolition of structures, except those structures  
14 located on any historic site as designated in the  
15 ~~national register~~ National Register or Hawaii ~~register~~  
16 Register of Historic Places<sup>98</sup> ~~as provided for in the~~  
17 ~~National Historic Preservation Act of 1966, Public Law~~  
18 ~~89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS~~<sup>99</sup>;
- 19 9. Zoning variances except shoreline set-back variances;  
20 and
- 21 10. Continuing administrative activities including, but not  
22 limited to,<sup>100</sup> purchase of supplies and personnel-related  
23 actions.
- 24 B. All exemptions under the classes in this section are  
25 inapplicable when the cumulative impact of planned successive  
26 actions in the same place, over time, is significant, or when  
27 an action that is normally insignificant in its impact on the  
28 environment may be significant in a particularly sensitive  
29 environment.
- 30 C. Any agency, at any time, may request that a new exemption  
31 class be added, or that an existing one be amended or deleted.  
32 The request shall be submitted to the council, in writing, and  
33 contain detailed information to support the request as set  
34 forth in section 11-201-16, environmental council rules.
- 35 D. Each agency, through time and experience, shall develop its  
36 own list of specific types of actions ~~which~~ that<sup>101</sup> fall within  
37 the exempt classes, as long as these lists are consistent with  
38 both the letter and intent expressed in these exempt classes  
39 and chapter 343, HRS. These lists and any amendments to the  
40 lists shall be submitted to the council for review and  
41 concurrence. The lists shall be reviewed periodically by the  
42 council.
- 43 E. Each agency shall maintain records of actions which it has  
44 found to be exempt from the requirements for preparation of an

1 environmental assessment in chapter 343, HRS, and each agency  
2 shall produce the records for review upon request.

3 F. In the event the governor declares a state of emergency, the  
4 governor may exempt any affected program or action from  
5 complying with this chapter.  
6

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

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<sup>92</sup> *Housekeeping.*

*Previous Council recommendation.*

<sup>93</sup> *Exemptions. Cumulative Impacts.*

Language is drawn from 40 CFR 1508.9. It is meant to clarify the cumulative impacts should also be considered granting an exemption. Source:

<http://ceq.hss.doe.gov/nepa/regs/ceq/1508.htm#1508.4>

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

<sup>94</sup> *Exemptions. Approving Agency.*

Language is unnecessary.

<sup>95</sup> *Housekeeping. Previous Council recommendation.*

<sup>96</sup> *Housekeeping. Previous Council recommendation.*

<sup>97</sup> *Housekeeping. Previous Council recommendation.*

<sup>98</sup> *Housekeeping. Previous Council recommendation.*

<sup>99</sup> *Housekeeping. Previous Council recommendation.*

<sup>100</sup> *Housekeeping. Previous Council recommendation.*

<sup>101</sup> *Housekeeping. Previous Council recommendation.*

**Subchapter 6 Determination of Significance**

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

A. For agency actions, except those actions exempt from the preparation of an environmental assessment pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:

1. Seek, at the earliest practicable time, 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<sup>102</sup> the proposing agency reasonably believes to be affected;
2. Identify the accepting authority pursuant to section 11-200-4 and specify ~~what~~ the statutory conditions under section 343-5(a), HRS, that<sup>103</sup> require the preparation of an environmental assessment;
3. Prepare an environmental assessment pursuant to section 11-200-10 ~~of this chapter which shall also identify that identifies~~<sup>104</sup> potential impacts, evaluate ~~evaluates~~<sup>105</sup> the potential significance of each impact, and ~~provide~~ provides<sup>106</sup> for detailed study of significant impacts;
4. Determine, after reviewing the environmental assessment described in paragraph (3), and considering the significance criteria in section 11-200-12, whether the proposed action warrants an anticipated ~~negative declaration FONSI~~<sup>107</sup> or an ~~environmental impact statement preparation notice EISPN~~<sup>108</sup>, provided that for an ~~environmental impact statement preparation notice EISPN~~<sup>109</sup>, the proposing agency shall inform the accepting authority of the proposed action;
5. File the appropriate notice of determination (~~anticipated negative declaration FONSI~~<sup>110</sup> or ~~environmental impact statement preparation notice EISPN~~<sup>111</sup> in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form referenced<sup>112</sup> in section 11-200-3 (~~and~~<sup>113</sup>), and four copies of the supporting environmental assessment (a draft environmental assessment for the anticipated ~~negative declaration FONSI~~<sup>114</sup> or a final environmental assessment for the ~~environmental impact statement preparation notice EISPN~~<sup>115</sup>) with the office in accordance with sections 11-200-3, 11-200-11.1, 11-200-11.2, and other applicable sections of this chapter;

- 1           6. ~~Distribute~~ Circulate<sup>116</sup>, concurrently with the filing in  
2 paragraph (5), the draft environmental assessment to  
3 other agencies having jurisdiction or expertise as well  
4 as citizen groups and individuals ~~which that~~<sup>117</sup> the  
5 proposing agency reasonably believes to be affected;
- 6           7. Deposit, concurrently with the filing in paragraph (5),  
7 one copy of the draft environmental assessment or  
8 EISPN<sup>118</sup> at the nearest state library in each county in  
9 which the proposed action is to occur. The applicant  
10 shall also deposit a copy of the final environmental  
11 assessment at the nearest state library in each county  
12 in which the proposed action is to occur<sup>119</sup>;
- 13           8. Receive and respond to public comments in accordance  
14 with: section 11-200-9.1 for draft environmental  
15 assessments for anticipated ~~negative declaration~~ FONSI<sup>120</sup>  
16 determinations; or, section 11-200-15 for environmental  
17 assessments for ~~preparation notices~~ EISPNS<sup>121</sup>. For draft  
18 environmental assessments, the proposing agency shall  
19 revise the environmental assessment to incorporate  
20 public comments as appropriate, and append copies of  
21 comment letters and responses in the environmental  
22 assessment (the draft environmental assessment as  
23 revised, shall be filed as a final environmental  
24 assessment as described in section 11-200-11.2); and
- 25           9. As appropriate, issue either a ~~negative declaration~~  
26 FONSI<sup>122</sup> determination or an ~~environmental impact~~  
27 ~~statement preparation notice~~ EISPN<sup>123</sup> pursuant to the  
28 requirements of section 11-200-11.2, ~~provided that for.~~  
29 For<sup>124</sup> ~~preparation notice~~ EISPN<sup>125</sup> determinations, the  
30 proposing agency shall proceed to section 11-200-15  
31 after fulfilling the requirements of sections 11-200-10,  
32 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.
- 33       B. For applicant actions, except those actions exempt from the  
34 preparation of an environmental assessment pursuant to section  
35 343-5, HRS, or those actions ~~which that~~<sup>126</sup> the approving agency  
36 declares exempt pursuant to section 11-200-8, the approving  
37 agency shall:
- 38           1. Require the applicant, at the earliest practicable time,  
39 to seek the advice and input of the lead county agency  
40 responsible for implementing the county's general plan  
41 for each county in which the proposed action is to  
42 occur, and consult with other agencies having  
43 jurisdiction or expertise as well as those citizen  
44 groups and individuals ~~which that~~<sup>127</sup> the approving agency  
45 reasonably believes to be affected;

- 1 ~~2. Require the applicant to provide whatever information~~  
2 ~~the approving agency deems necessary to complete the~~  
3 ~~preparation of an environmental assessment in accordance~~  
4 ~~with section 11-200-10;~~
- 5 2. Within thirty days from the date of receipt of the  
6 applicant's complete request for approval to the  
7 approving agency:
- 8 a. Require the applicant to<sup>128</sup> prepare an  
9 environmental assessment pursuant to section 11-  
10 200-10; and
- 11 b. ~~determine, after reviewing the environmental~~  
12 ~~assessment and considering the significance~~  
13 ~~criteria in section 11-200-12 whether the~~  
14 ~~proposed action warrants an anticipated negative~~  
15 ~~declaration or an environmental impact statement~~  
16 ~~preparation notice;~~
- 17 3. Determine, after reviewing the environmental assessment  
18 and considering the significance criteria in section 11-  
19 200-12 whether the proposed action warrants an  
20 anticipated FONSI or an EISPN;<sup>129</sup>
- 21 4. File the appropriate notice of determination  
22 (anticipated ~~negative declaration~~ FONSI<sup>130</sup> or  
23 ~~environmental impact statement preparation notice~~  
24 EISPN<sup>131</sup> in accordance with section 11-200-11.1 or 11-  
25 200-11.2), the completed informational form referenced<sup>132</sup>  
26 in section 11-200-3(d)<sup>133</sup> and four copies of the  
27 supporting environmental assessment (a draft  
28 environmental assessment for the anticipated ~~negative~~  
29 ~~declaration~~ FONSI<sup>134</sup> or a final environmental assessment  
30 for the ~~environmental impact statement preparation~~  
31 ~~notice~~ EISPN<sup>135</sup>) with the office in accordance with  
32 sections 11-200-3, and 11-200-11.1, or 11-200-11.2, and  
33 other applicable sections of this chapter<sup>136</sup>;
- 34 5. ~~Distribute~~ Circulate<sup>137</sup>, or require the applicant to  
35 distribute, concurrently with the filing in paragraph  
36 (4), the draft environmental assessment to other  
37 agencies having jurisdiction or expertise as well as  
38 citizen groups and individuals ~~which~~ that<sup>138</sup> the  
39 approving agency reasonably believes to be affected;
- 40 6. Deposit or require the applicant to deposit,  
41 concurrently with the filing in paragraph (4), one copy  
42 of the draft environmental assessment or EISPN<sup>139</sup> at the  
43 nearest state library in each county in which the  
44 proposed action is to occur. The applicant shall also  
45 deposit a copy of the final environmental assessment at

- 1           the nearest state library in each county in which the  
2           proposed action is to occur<sup>140</sup>;
- 3           7. Receive public comments, transmit copies of public  
4           comments to the applicant and require the applicant to  
5           respond to public comments, ~~all~~<sup>141</sup> in accordance with  
6           section 11-200-9.1 for draft environmental assessments,  
7           or 11-200-15 for ~~preparation notices~~ EISPNS<sup>142</sup> and ~~their~~  
8           any<sup>143</sup> associated final environmental assessments. For  
9           draft environmental assessments, the approving agency  
10          shall require the applicant: to ~~provide~~ revise the draft  
11          environmental assessment with whatever information the  
12          approving agency deems necessary ~~to revise the draft~~  
13          ~~environmental assessment~~<sup>144</sup>; to incorporate comments as  
14          appropriate; and, to include copies of comment letters  
15          and the applicant responses (the draft environmental  
16          assessment as revised shall be filed as a final  
17          environmental assessment as described in section 11-200-  
18          11.2); and
- 19          8. As appropriate, issue a ~~negative declaration~~ FONSI<sup>145</sup>  
20          determination or an ~~environmental impact statement~~  
21          ~~preparation notice~~ EISPN<sup>146</sup> with appropriate notice of  
22          determination thereof pursuant to section 11-200-11.2  
23          within thirty days ~~from the end of the thirty-day public~~  
24          ~~comment period~~ of receiving information required for  
25          delivery to the agency pursuant to paragraph (7)<sup>147</sup>. For  
26          ~~preparation notice~~ EISPN<sup>148</sup> determinations, the approving  
27          agency shall proceed to section 11-200-15 after  
28          fulfilling the requirements of sections 11-200-10, 11-  
29          200-11.2, 11-200-13, and 11-200-14, as appropriate.
- 30          C. For agency or applicant actions, the proposing agency or the  
31          approving agency, as appropriate, shall analyze or cause to be  
32          analyzed in the environmental assessment a reasonable range of  
33          alternatives, in addition to the proposed action ~~in the~~  
34          ~~environmental assessment~~<sup>149</sup>.
- 35          D. For agency or applicant actions, if the agency determines,  
36          through its judgment and experience, than an EIS is likely to  
37          be required, the agency may choose not to prepare an  
38          environmental assessment, or authorize the applicant to choose  
39          to prepare an environmental assessment, as applicable, and  
40          install shall prepare an EIS that begins with the preparation  
41          of an EISPN.<sup>150</sup>

42  
43           [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
44           (Imp: HRS §343-5, 343-6)

45

102 *Housekeeping. Previous Council recommendation.*  
103 *Housekeeping. Previous Council recommendation.*  
104 *Housekeeping. Previous Council recommendation.*  
105 *Housekeeping. Previous Council recommendation.*  
106 *Housekeeping. Previous Council recommendation.*  
107 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
108 *Housekeeping.*  
109 *Housekeeping.*  
110 Replace negative declaration with FONSI to mirror language in HRS 343.  
111 *Housekeeping.*  
112 *General Edit.*  
Adds clarity to what is being referenced.  
113 *General Edit.*  
114 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
115 *Housekeeping.*  
116 *Housekeeping.*  
The term "distribute" is the section heading of §11-200-21, thus giving the term a particular role in HAR 11-200, so the verb "circulate" is proposed instead.  
117 *Housekeeping. Previous Council recommendation.*  
118 *EISPN. Previous Council recommendation.*  
119 *Public Outreach. Previous Council recommendation.*  
120 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
121 *Housekeeping.*  
122 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
123 *Housekeeping.*  
124 *Housekeeping. Previous Council recommendation.*  
125 *Housekeeping.*  
126 *Housekeeping. Previous Council recommendation.*  
127 *Housekeeping. Previous Council recommendation.*  
128 *Preparation.*  
Aligns the process with Act 172 (2012), in which the amended HRS §343-5(e) states the following: "Whenever an applicant proposed an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agree to process the request for approval shall require the applicant to prepare an environmental assessment..." Deletes the thirty day requirement because the agency is no longer responsible for preparing the environmental assessment and deletes the requirement for the applicant to provide the information to the agency. This aligns the statute and rules with practice.  
129 *Housekeeping.*  
Text moved down from above.  
130 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
131 *Housekeeping.*  
132 *Housekeeping. Previous Council recommendation.*  
133 *General Edit.*  
134 *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.  
135 *Housekeeping.*  
136 *Housekeeping. Previous Council recommendation.*  
137 *Housekeeping.*  
The term "distribute" is the section heading of §11-200-21, thus giving the term a particular role in HAR 11-200, so the verb "circulate" is proposed instead.  
138 *Housekeeping. Previous Council recommendation.*  
139 *EISPN. Previous Council recommendation.*  
140 *Public Outreach. Previous Council recommendation.*  
141 *Housekeeping. Previous Council recommendation.*  
142 *Housekeeping.*

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- <sup>143</sup> *Housekeeping. EISPN.*  
Replaced "their" with "any" because, under Act 172 (2012), EISPNs no longer require environmental assessments.
- <sup>144</sup> *Preparation.*  
Aligns the process with Act 172 (2012), in which the amended Chapter 343-5(e) states the following: "Whenever an applicant proposed an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agree to process the request for approval shall require the applicant to prepare an environmental assessment..."
- <sup>145</sup> *General Edit.*  
Replace negative declaration with FONSI to mirror language in HRS 343.
- <sup>146</sup> *Housekeeping.*
- <sup>147</sup> *Time Limit. Previous Council recommendation.*
- <sup>148</sup> *Housekeeping.*
- <sup>149</sup> *Alternatives Analysis. Preparation.*  
Clarifies that the alternatives to be examined are done so in the environmental assessment, not independent of it, and that the agency directs the applicant to analyze alternatives in an applicant-prepared EA, as provided for in Act 172, (2012). Inserts the term reasonable to emphasize that not all possible alternatives are required to be analyzed.
- <sup>150</sup> *Direct-to-EIS.*  
Incorporates language from Act 172 (2012) allowing agencies to bypass preparing the environmental assessment and instead prepare an EIS beginning with the EISPN. Also allows agencies to authorize applicants to bypass the environmental assessment, should the applicant desire, and instead prepare an EIS beginning with the EISPN.

Public Review and Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration~~ FONSI Determinations and Addenda to Draft Environmental Assessments

- 1           §11-200-9.1 Public Review and Response Requirements for Draft  
2                           Environmental Assessments for Anticipated ~~Negative~~  
3                           ~~Declaration~~ FONSI<sup>151</sup> Determinations and Addenda to  
4                           Draft Environmental Assessments
- 5       A. This section shall apply only if a proposing agency or an  
6       approving agency anticipates a ~~negative declaration~~ FONSI<sup>152</sup>  
7       determination for a proposed action and that agency has  
8       completed the requirements of section 11-200-9(a), ~~paragraphs~~  
9       (1), ~~(2), (3), (4), (5), (6) and through~~ 11-200-9(a)<sup>153</sup> (7), or  
10      section 11-200-9(b), ~~paragraphs (1), (2), (3), (4), (5) and~~  
11      through 11-200-9(b)<sup>154</sup> (6), as appropriate.
- 12      B. ~~The period for public review and for submitting written~~  
13      ~~comments for both agency actions and applicant actions shall~~  
14      ~~begin as of the initial issue date that notice of availability~~  
15      ~~of the draft environmental assessment was published in the~~  
16      ~~periodic bulletin and shall continue for a period of thirty~~  
17      ~~days. For both agency actions and applicant actions, the~~  
18      ~~period for public review and for submitting written comments~~  
19      ~~shall commence as of the date notice of availability of the~~  
20      ~~draft environmental assessment is initially issued in the~~  
21      ~~periodic bulletin and shall continue for a period of thirty~~  
22      ~~days.~~<sup>155</sup> Written comments to the proposing agency or approving  
23      agency, whichever is applicable, with a copy of the comments  
24      to the applicant, if applicable,<sup>156</sup> or proposing agency and the  
25      office<sup>157</sup>, shall be received or postmarked to the proposing  
26      agency or approving agency, within the thirty-day period. Any  
27      comments outside of the thirty-day period need not be  
28      considered or responded to. However, for a proposed site for a  
29      new correctional facility or for the expansion of an existing  
30      correctional facility, pursuant to section 353-16.35, HRS,  
31      this thirty-day period shall be a sixty-day period.<sup>158</sup>
- 32      C. For agency actions, the proposing agency shall respond in  
33      writing to all comments received or postmarked during the  
34      thirty-day review period, incorporate comments into the final  
35      environmental assessment<sup>159</sup> as appropriate, and append the  
36      comments and responses ~~in~~ to<sup>160</sup> the final environmental  
37      assessment. ~~Each response shall be sent directly to the person~~  
38      ~~commenting, with copies of the response also sent to the~~  
39      ~~office. If a number of comments are identical or very similar,~~  
40      the proposing agency may group the comments and prepare a  
41      single answer for each group. Comments may be summarized if  
42      they are especially voluminous. The comments or summaries must  
43      be attached to the final EIS regardless of whether the agency

Public Review and Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration~~ FONSI Determinations and Addenda to Draft Environmental Assessments

- 1 believes they merit individual discussion in the body of the  
 2 final EIS.<sup>161</sup>
- 3 D. For applicant actions, the applicant shall respond in writing  
 4 to all comments received or postmarked during the thirty-day  
 5 review period and ~~the approving agency shall~~<sup>162</sup> incorporate ~~or~~  
 6 comments into the final environmental assessment as  
 7 appropriate and<sup>163</sup> append the comments and responses ~~in~~ to<sup>164</sup>  
 8 the final environmental assessment. Each response shall be  
 9 sent directly to the person commenting, with copies of the  
 10 response also sent to the office. If a number of comments are  
 11 identical or very similar, the applicant may group the  
 12 comments and prepare a single answer for each group. Comments  
 13 may be summarized if they are especially voluminous. The  
 14 comments or summaries must be attached to the final EIS  
 15 regardless of whether the agency believes they merit  
 16 individual discussion in the body of the final EIS.<sup>165</sup> ~~A copy~~  
 17 ~~of each response shall be sent to the approving agency for its~~  
 18 ~~timely preparation of a determination and notice thereof~~  
 19 ~~pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-~~  
 20 ~~11.2.~~<sup>166</sup>
- 21 E. An addendum document to a draft environmental assessment shall  
 22 reference the original draft environmental assessment to which  
 23 it attaches ~~to~~<sup>167</sup> and shall comply with all applicable public  
 24 review and comment requirements set forth in sections 11-200-3  
 25 and 11-200-9.

26  
 27 [Eff and comp AUG 31 1996] (Auth: HRS §343-3, 343-5, 343-6) (Imp:  
 28 HRS §343-3, 343-5, 343-6)

<sup>151</sup> *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

<sup>152</sup> *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

<sup>153</sup> *Housekeeping. Previous Council recommendation.*

<sup>154</sup> *Housekeeping. Previous Council recommendation.*

<sup>155</sup> *Commenting. Previous Council recommendation.*

<sup>156</sup> *Housekeeping.*

Not all environmental assessments involve an applicant.

<sup>157</sup> *OEQC. Previous Council recommendation.*

<sup>158</sup> *Commenting. Public Review. Time Limit. Previous Council recommendation.*

Incorporates public comments and time limits from HRS §353-16.35:

Development or expansion of in-state correctional facilities. (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of private in-state correctional facilities or public in-state turnkey correctional facilities to reduce prison overcrowding; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion of an existing correctional facility under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the

Public Review and Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration~~ FONSI Determinations and Addenda to Draft Environmental Assessments

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governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.

Note: Perhaps other statutory provisions, such as for Hawaiian fishponds, should also be described in the rules.

159 *Housekeeping. Commenting.*

Clarifies that the comments are incorporated into the final environmental assessment.

160 *Housekeeping.*

161 *Commenting.*

Because responses are provided in the FEIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be too burdensome. Even though NEPA does not have this requirement, many agencies and members of the public approve of the NEPA approach. NEPA also provides guidance to allow preparers to group and summarize comments that are identical or very similar and especially voluminous. This allows for shorter documents while still allowing all members of the public to comment on a proposed action and have a response to their comments.

Language adapted from CEQ 40 Questions, Question #29a, Responses to Comments.

Source: <http://ceq.hss.doe.gov/NEPA/regs/40/20-29.HTM#29>

29a. Responses to Comments. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentator on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentator said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

162 *Preparation.*

Aligns the process with Act 172 (2012), in which the amended Chapter 343-5(e) states the following: "Whenever an applicant proposed an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agree to process the request for approval shall require the applicant to prepare an environmental assessment..."

163 *Housekeeping. Commenting. Previous Council recommendation.*

Clarifies that the comments are incorporated into the final environmental assessment.

Public Review and Response Requirements for Draft Environmental Assessments for Anticipated ~~Negative Declaration~~ FONSI Determinations and Addenda to Draft Environmental Assessments

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<sup>164</sup> *Housekeeping.*

<sup>165</sup> *Commenting.*

Because responses are provided in the FEIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be too burdensome. Even though NEPA does not have this requirement, many agencies and members of the public approve of the NEPA approach. NEPA also provides guidance to allow preparers to group and summarize comments that are identical or very similar and especially voluminous. This allows for shorter documents while still allowing all members of the public to comment on a proposed action and have a response to their comments.

<sup>166</sup> *Commenting. Preparation. Previous Council recommendation.*

Under Act 172 (2012), applicants prepare their own documents, so the timely preparation requirement is no longer applicable.

<sup>167</sup> *Housekeeping. Previous Council recommendation.*

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

2 The proposing agency or approving agency shall prepare or caused  
3 to be prepared<sup>168</sup> any draft or final environmental assessment of each  
4 proposed action and determine whether the anticipated effects  
5 constitute a significant effect in the context of chapter 343, HRS,  
6 and section 11-200-12. The environmental assessment shall contain, but  
7 not be limited to, the following information:

- 8 A. Identification of applicant or proposing agency;  
9 B. Identification of approving agency, if applicable;  
10 C. Identification of agencies, citizen groups, and individuals  
11 consulted in ~~making~~ preparing<sup>169</sup> the assessment;  
12 D. General description of the action's technical, economic,  
13 social, and environmental characteristics;  
14 E. Summary description of the affected environment, including  
15 suitable and adequate regional, location and site maps such as  
16 Flood Insurance Rate Maps, Floodway Boundary Maps, or United  
17 States Geological Survey topographic maps;  
18 F. Identification and ~~summary~~ analysis<sup>170</sup> of impacts and  
19 alternatives considered;  
20 G. Proposed mitigation measures;  
21 H. Agency determination or, for draft environmental assessments  
22 only, an anticipated determination;  
23 I. Findings and reasons supporting the agency determination or  
24 anticipated determination;  
25 J. Agencies to be consulted in the preparation of the EIS, if an  
26 EIS is to be prepared;  
27 K. List and current status<sup>171</sup> of all permits and approvals (State,  
28 federal, county) required; and  
29 L. Written comments and responses to the comments under the early  
30 consultation provisions of sections 11-200-9(a)(1), 11-200-  
31 9(b)(1), or 11-200-15, and statutorily prescribed public  
32 review periods.  
33

34 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
35 (Imp: HRS §343-5(c), 343-6)  
36

37

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<sup>168</sup> *Preparation.*

Aligns the process with Act 172 (2012), in which the amended Chapter 343-5(e) states the following: "Whenever an applicant proposed an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agree to process the request for approval shall require the applicant to prepare an environmental assessment..."

<sup>169</sup> *Housekeeping. Previous Council recommendation.*

<sup>170</sup> *EA Content.*

The inclusion of a summary of the impact may contribute to the general low quality of information in EAs. By requiring the analysis be included, the overall quality of information should increase. Also added to the proposed § 11-200-10. There is some disagreement to this position on the basis that "analysis" may be too open-ended and result in longer documents.

<sup>171</sup> *Permitting. Previous Council recommendation.*

1 §11-200-11 REPEALED. [R AUG 31 1996]  
2  
3  
4

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

- 3 A. ~~After~~ If, after preparing, or causing to be prepared,<sup>172</sup> an  
4 environmental assessment, ~~and~~ reviewing any public and agency  
5 comments, ~~if any,~~ and applying the significance criteria in  
6 section 11-200-12, ~~if~~<sup>173</sup> the proposing agency or the approving  
7 agency anticipates that the proposed action is not likely to  
8 have a significant effect, it shall issue a notice of  
9 determination ~~which that~~<sup>174</sup> shall be an anticipated ~~negative~~  
10 ~~declaration~~ FONSI<sup>175</sup> subject to the public review provisions of  
11 section 11-200-9.1. The proposing agency or approving agency  
12 shall ~~also~~<sup>176</sup> file such notice with the office as early as  
13 possible after the determination is made pursuant to and in  
14 accordance with section 11-200-9, and the requirements in  
15 subsection (c),<sup>177</sup> along with four copies one hard copy and one  
16 electronic copy<sup>178</sup> of the supporting environmental assessment.  
17 In addition ~~to the above~~<sup>179</sup>, the anticipated ~~negative~~  
18 ~~declaration~~ FONSI<sup>180</sup> determination for any applicant action  
19 shall be mailed to the requesting applicant by the approving  
20 agency.
- 21 B. The office shall publish notice of availability of the draft  
22 environmental assessment for the anticipated ~~negative~~  
23 ~~declaration~~ FONSI<sup>181</sup> in the periodic bulletin following the  
24 date of receipt by the office in accordance with section 11-  
25 200-3.
- 26 C. The notice of determination shall indicate in a concise  
27 manner:
- 28 1. Identification of applicant or proposing agency;
  - 29 2. Identification of ~~accepting authority~~ the approving or  
30 permitting agency<sup>182</sup>;
  - 31 3. Brief description of proposed action;
  - 32 4. ~~Determination~~ The determination<sup>183</sup>;
  - 33 5. Reasons supporting the<sup>184</sup> determination; and
  - 34 6. ~~Name~~ The name<sup>185</sup>, address, and phone number of a<sup>186</sup>  
35 contact person for further information.
- 36 D. When an agency withdraws a determination pursuant to its  
37 rules, the agency shall submit to the office a written letter  
38 informing the office of its withdrawal. The office shall  
39 publish notice of agency withdrawals in accordance with  
40 section 11-200-3.

41  
42 [Eff and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §  
43 343-5(c), 343-6)

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<sup>172</sup> *Preparation.*

Aligns the process with Act 172 (2012), in which the amended Chapter 343-5(e) states the following: "Whenever an applicant proposed an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agree to process the request for approval shall require the applicant to prepare an environmental assessment..."

<sup>173</sup> *Housekeeping. Previous Council recommendation.*

<sup>174</sup> *Housekeeping. Previous Council recommendation.*

<sup>175</sup> *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

<sup>176</sup> *Housekeeping. Previous Council recommendation.*

<sup>177</sup> *Housekeeping. Previous Council recommendation.*

<sup>178</sup> *OEQC. Modernization. Bulletin.*

OEQC requests that preparers not send it four copies. One hard copy and one digital copy are sufficient.

NOTE: OEQC suggests establishing a mechanism for identifying and storing official, notarized versions for occasions where a legal case requires an official version of the document. OEQC does not have the physical space or security to store such documents on everyone's behalf.

<sup>179</sup> *Housekeeping. Previous Council recommendation.*

<sup>180</sup> *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

<sup>181</sup> *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

<sup>182</sup> *Approving Agency. Previous Council recommendation.*

<sup>183</sup> *Housekeeping. Previous Council recommendation.*

<sup>184</sup> *Housekeeping. Previous Council recommendation.*

<sup>185</sup> *Housekeeping. Previous Council recommendation.*

<sup>186</sup> *Housekeeping. Previous Council recommendation.*

1 §11-200-11.2 Notice of Determination for Final Environmental  
2 Assessments

3 A. After preparing a final environmental assessment, reviewing  
4 any public and agency comments, ~~if any,~~ and<sup>187</sup> applying the  
5 significance criteria in section 11-200-12, the proposing  
6 agency or the approving agency shall issue one of the  
7 following notices of determination in accordance with section  
8 11-200-9(a) or 11-200-9(b), and file the notice with the  
9 office addressing the requirements in subsection (c), along  
10 with ~~four copies~~ one hard copy and one electronic copy<sup>188</sup> of  
11 the supporting final environmental assessment, ~~provided that~~  
12 ~~in~~ In addition, to the above, all notices of determination for  
13 any applicant action shall be mailed to the requesting  
14 applicant by the approving agency.~~+~~<sup>189</sup>

15 1. ~~environmental impact statement preparation notice~~  
16 EISPN<sup>190</sup>. If the proposing agency or approving agency  
17 determines that a proposed action may have a significant  
18 effect, it shall issue a notice of determination ~~which~~  
19 ~~that~~<sup>191</sup> shall be an ~~environmental impact statement~~  
20 ~~preparation notice~~ EISPN<sup>192</sup> and shall file such notice  
21 ~~shall be filed~~<sup>193</sup> with the office<sup>194</sup> as early as possible  
22 after the determination is made pursuant to and in  
23 accordance with section 11-200-9.

24 2. ~~Negative declaration FONSI~~<sup>195</sup>. If the proposing agency or  
25 approving agency determines that a proposed action is  
26 not likely to have a significant effect, it shall issue  
27 a notice of determination ~~which that~~<sup>196</sup> shall be a  
28 ~~negative declaration FONSI~~<sup>197</sup>, and the proposing agency  
29 or approving agency shall file such notice with the  
30 office as early as possible after the determination is  
31 made pursuant to and in accordance with section 11-200-  
32 9.

33 B. The office shall publish the appropriate notice of  
34 determination in the periodic bulletin following receipt of  
35 the documents in subsection (a) by the office in accordance  
36 with section 11-200-3.

37 C. The notice of determination shall indicate in a concise  
38 manner:

- 39 1. Identification of the<sup>198</sup> applicant or proposing agency;
- 40 2. Identification of the<sup>199</sup> accepting authority;
- 41 3. Brief description of the<sup>200</sup> proposed action;
- 42 4. ~~Determination~~ The determination<sup>201</sup>;
- 43 5. Reasons supporting the<sup>202</sup> determination; and
- 44 6. ~~Name~~ The name<sup>203</sup>, address, and phone number of contact  
45 person for further information.

1 D. When an agency withdraws a determination pursuant to its  
2 rules, the agency shall submit to the office a written letter  
3 informing the office of its withdrawal. The office shall  
4 publish notice of agency withdrawals in accordance with  
5 section 11-200-3.  
6

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

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187 *Housekeeping. Previous Council recommendation.*

188 *OEQC. Modernization. Bulletin.*

OEQC requests that preparers not send it four copies. One hard copy and one digital copy are sufficient.

NOTE: OEQC suggests establishing a mechanism for identifying and storing official, notarized versions for occasions where a legal case requires an official version of the document. OEQC does not have the physical space or security to store such documents on everyone's behalf.

189 *Housekeeping. Previous Council recommendation.*

190 *Housekeeping.*

191 *Housekeeping. Previous Council recommendation.*

192 *Housekeeping.*

193 *Housekeeping. Previous Council recommendation.*

194 *OEQC. Previous Council recommendation.*

195 *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

196 *Housekeeping. Previous Council recommendation.*

197 *General Edit.*

Replace negative declaration with FONSI to mirror language in HRS 343.

198 *Housekeeping. Previous Council recommendation.*

199 *Housekeeping. Previous Council recommendation.*

200 *Housekeeping. Previous Council recommendation.*

201 *Housekeeping. Previous Council recommendation.*

202 *Housekeeping. Previous Council recommendation.*

203 *Housekeeping. Previous Council recommendation.*

## 1 §11-200-12 Significance Criteria

2 A. In considering the significance of potential environmental  
3 effects, agencies shall consider the sum of effects on the  
4 quality of the environment, and shall evaluate the overall and  
5 cumulative effects of an action.

6 B. In determining whether an action may have a significant effect  
7 on the environment, the agency shall consider every phase of a  
8 proposed action, the expected consequences, both primary and  
9 secondary, and the cumulative as well as the short-term and  
10 long-term effects of the action. In most instances, an action  
11 shall be determined to have a significant effect on the  
12 environment if it:

- 13 1. Involves an irrevocable commitment to loss or  
14 destruction of any natural or cultural resource;
  - 15 2. Curtails the range of beneficial uses of the  
16 environment;
  - 17 3. Conflicts with the state's long-term environmental  
18 policies or goals and guidelines as expressed in chapter  
19 344, HRS, and any revisions thereof and amendments  
20 thereto, court decisions, or executive orders;
  - 21 4. Substantially affects the economic welfare, social  
22 welfare, ~~and~~ or<sup>204</sup> cultural practices of the community or  
23 State;
  - 24 5. Substantially affects public health;
  - 25 6. Involves substantial secondary impacts, such as  
26 population changes or effects on public facilities;
  - 27 7. Involves a substantial degradation of environmental  
28 quality;
  - 29 8. Is individually limited but cumulatively has  
30 considerable effect upon the environment or involves a  
31 commitment for larger actions;
  - 32 9. Substantially affects a rare, threatened, or endangered  
33 species, or its habitat;
  - 34 10. Detrimentally affects air or water quality or ambient  
35 noise levels;
  - 36 11. Affects or is likely to suffer damage by being located  
37 in an environmentally sensitive area such as a flood  
38 plain, tsunami zone, beach, erosion-prone area,  
39 geologically hazardous land, estuary, fresh water, or  
40 coastal waters;
  - 41 12. Substantially affects scenic vistas and viewplanes  
42 identified in county or state plans or studies; or,
  - 43 13. Requires substantial energy consumption.
- 44  
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<sup>204</sup> *Significance Determination. Cultural Impacts.*  
The significance criterion is not substantially affects all three (economic, social, cultural), but any one of the three. Language changed to clarify this.

DRAFT

1 §11-200-13 Consideration of Previous Determinations and  
2 Accepted Statements

3 A. Chapter 343, HRS, provides that whenever an agency proposes to  
4 implement an action or receives a request for approval, the  
5 agency may consider and, when applicable and appropriate,  
6 incorporate by reference, in whole or in part, previous  
7 determinations of whether a statement is required,<sup>205</sup> and  
8 previously accepted statements.

9 B. Previous determinations and previously accepted statements may  
10 be incorporated by applicants and agencies whenever the  
11 information contained therein is pertinent to the decision at  
12 hand and has logical relevancy and bearing to the action being  
13 considered.

14 C. Agencies shall not, without considerable pre-examination and  
15 comparison, use past determinations and previous statements to  
16 apply to the action at hand. The action for which a  
17 determination is sought shall be thoroughly reviewed prior to  
18 the use of previous determinations and previously accepted  
19 statements. Further, when previous determinations and previous  
20 statements are considered or incorporated by reference, they  
21 shall be substantially similar to and relevant to the action  
22 then being considered.

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

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<sup>205</sup> *Housekeeping. Previous Council recommendation.*

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1           **Subchapter 7 Preparation of Draft & Final Environmental Impact**  
2                           **Statements**

3           §11-200-14    General Provisions

4           Chapter 343, HRS, directs that,<sup>206</sup> in both agency and applicant  
5 actions where statements are required, the preparing party shall  
6 prepare the EIS, submit it for review and comments, and revise it,  
7 taking into account all ~~critiques~~ comments<sup>207</sup> and responses.  
8 Consequently, the EIS process involves more than the preparation of a  
9 document; it involves the entire process of research, discussion,  
10 preparation of a statement, and review. The EIS process shall involve  
11 at a minimum: identifying environmental concerns, obtaining various  
12 relevant data, conducting necessary studies, receiving public and  
13 agency input, evaluating alternatives, and proposing measures for  
14 avoiding, minimizing, rectifying or reducing adverse impacts. An EIS  
15 is meaningless without the conscientious application of the EIS  
16 process as a whole, and shall not be merely a self-serving recitation  
17 of benefits ~~and~~ or<sup>208</sup> a rationalization of the proposed action.  
18 Agencies shall ensure that statements are prepared at the earliest  
19 opportunity in the planning and decision-making process. This shall  
20 assure an early open forum for discussion of adverse effects and  
21 available alternatives, and that the decision-makers will be  
22 enlightened to any environmental consequences of the proposed action.

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

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- <sup>206</sup> Housekeeping.
  - <sup>207</sup> *Housekeeping. Previous Council recommendation.*
  - <sup>208</sup> *Housekeeping. Previous Council recommendation.*

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1 D. Any substantive comments received by the proposing agency or  
2 applicant pursuant to this section shall be responded to in  
3 writing and,<sup>215</sup> as appropriate, incorporated into the draft EIS  
4 by the proposing agency or applicant prior to the filing of  
5 the draft EIS with the approving agency or accepting  
6 authority. Letters submitted ~~which~~ that<sup>216</sup> contain no comments  
7 on the project but only serve to acknowledge receipt of the  
8 document do not require a written response. Acknowledgement of  
9 receipt of these items must be included in the final  
10 environmental assessment or final statement.

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

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<sup>209</sup> Housekeeping. Previous Council recommendation.

<sup>210</sup> Direct-to-EIS. Commenting.

With the option to bypass the EA, the discretion to not hold a public scoping meeting would be inappropriate. In cases where the environmental assessment is bypassed, the agency or applicant should hold a public scoping meeting because the benefit of public input from the environmental assessment process is not available.

<sup>211</sup> Housekeeping.

<sup>212</sup> Housekeeping. Previous Council recommendation.

<sup>213</sup> Housekeeping.

<sup>214</sup> Housekeeping. Previous Council recommendation.

<sup>215</sup> Housekeeping.

<sup>216</sup> Housekeeping. Previous Council recommendation.

## 1 §11-200-16 Content Requirements

2 The ~~environmental impact statement~~ EIS<sup>217</sup> shall contain an  
3 explanation of the environmental consequences of the proposed action,  
4 as prescribed in section 11-200-17<sup>218</sup>. The contents shall fully declare  
5 the environmental implications of the proposed action and shall  
6 discuss all ~~relevant and feasible~~ reasonably foreseeable<sup>219</sup>  
7 consequences of the action. In order that the public can be fully  
8 informed and that the agency can make a sound decision based upon the  
9 full range of responsible opinion on environmental effects, a  
10 statement shall include responsible opposing views, if any, on  
11 significant environmental issues raised by the proposal.  
12

13 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
14 (Imp: HRS §343-2, 343-5, 343-6)  
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<sup>217</sup> *Housekeeping. Previous Council recommendation.*

<sup>218</sup> *Preparation.*

Explicitly connect HAR §11-200-16 and §11-200-17.

<sup>219</sup> *Cumulative Impacts.*

Replaces the "relevant and feasible" with "reasonably foreseeable," a phrase with more case history and federal guidance to provide clarity to the desired standard.

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- 1 §11-200-17 Content Requirements; Draft Environmental Impact  
2 Statement
- 3 A. The draft EIS, at a minimum, shall contain the information  
4 required in this section.
- 5 B. The draft EIS shall contain a summary sheet ~~which~~ that<sup>220</sup>  
6 concisely discusses the following:
- 7 1. Brief description of the action;
  - 8 2. Significant beneficial and adverse impacts (including  
9 cumulative impacts and secondary impacts);
  - 10 3. Proposed mitigation measures;
  - 11 4. Alternatives considered;
  - 12 5. Unresolved issues; ~~and~~
  - 13 6. Compatibility with land use plans and policies, and  
14 listing of permits or approvals; ~~and~~
  - 15 7. A list of prior relevant environmental assessments and  
16 EISs, in order to identify potential segmentation or  
17 cumulative impacts.<sup>221</sup>
- 18 C. The draft EIS shall contain a table of contents.
- 19 D. The draft EIS shall contain a separate and distinct section  
20 that includes a statement of purpose and need for the proposed  
21 action.
- 22 E. The draft EIS shall contain a project description which shall  
23 include the following information, but need not supply  
24 extensive detail beyond that needed for evaluation and review  
25 of the environmental impact:
- 26 1. A detailed map (preferably a United States Geological  
27 Survey topographic map, Flood Insurance Rate Maps or  
28 Floodway Boundary Maps as applicable) and a related  
29 regional map;
  - 30 2. Statement of objectives;
  - 31 3. General description of the action's technical, economic,  
32 social, cultural,<sup>222</sup> and environmental characteristics;
  - 33 4. Use of public funds or lands for the action;
  - 34 5. Phasing and timing of action;
  - 35 6. Summary technical data, diagrams, and other information  
36 necessary to permit an evaluation of potential  
37 environmental impact by commenting agencies and the  
38 public; and
  - 39 7. Historic perspective.
- 40 F. The draft EIS shall describe in a separate and distinct  
41 section reasonable alternatives ~~which~~ that<sup>223</sup> could attain the  
42 objectives of the action, ~~regardless of cost, in sufficient~~  
43 ~~detail to explain why they were rejected~~ and for alternatives  
44 that were eliminated from detailed study, briefly discuss the  
45 reasons for their having been eliminated<sup>224</sup>. The section shall

1 include a rigorous exploration and objective evaluation of the  
2 environmental impacts of all such alternative actions.  
3 Particular attention shall be given to alternatives that might  
4 enhance environmental quality or avoid, reduce, or minimize  
5 some or all of the adverse environmental effects, costs, and  
6 risks. Examples of alternatives include:

- 7 1. The alternative of no action;
- 8 2. Alternatives requiring actions of a significantly  
9 different nature ~~which~~ that<sup>225</sup> would provide similar  
10 benefits with different environmental impacts;
- 11 3. Alternatives related to different designs or details of  
12 the proposed actions ~~which~~ that<sup>226</sup> would present  
13 different environmental impacts;
- 14 4. The alternative of postponing action pending further  
15 study; and,
- 16 5. Alternative locations for the proposed project.

17 In each case, the analysis shall be sufficiently detailed to  
18 allow the comparative evaluation of the environmental  
19 benefits, costs, and risks of the proposed action and each  
20 reasonable alternative. For any agency actions, the discussion  
21 of alternatives shall include, where relevant, those  
22 alternatives not within the existing authority of the agency.

23 G. The draft EIS shall include a description of the environmental  
24 setting, including a description of the environment in the  
25 vicinity of the action, as it exists before commencement of  
26 the action, from both a local and regional perspective.  
27 Special emphasis shall be placed on environmental resources  
28 that are rare or unique to the region and the project site  
29 (including natural or human-made resources of historic,  
30 cultural,<sup>227</sup> archaeological, or aesthetic significance);  
31 specific reference to related projects, public and private,  
32 existent or planned in the region shall also be included for  
33 purposes of examining the possible overall cumulative impacts  
34 of such actions. Proposing agencies and applicants shall also  
35 identify, where appropriate, population and growth  
36 characteristics of the affected area, ~~and~~ any population and  
37 growth assumptions used to justify the action, ~~and determine~~  
38 any<sup>228</sup> secondary population and growth impacts resulting from  
39 the proposed action and its alternatives. In any event, it is  
40 essential that the sources of data used to identify, qualify,  
41 or evaluate any and all environmental consequences be  
42 expressly noted in the draft EIS<sup>229</sup>.

43 H. The draft EIS shall include a statement of the relationship of  
44 the proposed action to land use and resource<sup>230</sup> plans,  
45 policies, and controls for the affected area. Discussion of

1 how the proposed action may conform or conflict with  
2 objectives and specific terms of approved or proposed land and  
3 resource<sup>231</sup> use plans, policies, and controls, if any, for the  
4 area affected shall be included. Where a conflict or  
5 inconsistency exists, the statement shall describe the extent  
6 to which the agency or applicant has reconciled its proposed  
7 action with the plan, policy, or control, and the reasons why  
8 the agency or applicant has decided to proceed,  
9 notwithstanding the absence of full reconciliation. The draft  
10 EIS shall also contain a list of necessary permits and<sup>232</sup>  
11 approvals, required for the action, from governmental  
12 agencies, boards, or commissions or other similar groups  
13 having jurisdiction. The status of each identified permit or<sup>233</sup>  
14 approval shall also be described.

15 I. The draft EIS shall include a statement of the probable impact  
16 of the proposed action on the environment, and impacts of the  
17 natural or human environment on the project, which shall  
18 include consideration of all phases of the action and  
19 consideration of all consequences on the environment, ~~and~~  
20 including direct and indirect effects ~~shall be included~~<sup>234</sup>. The  
21 interrelationships and cumulative environmental impacts of the  
22 proposed action and other related projects shall be discussed  
23 in the draft EIS. ~~It should be realized~~ The draft EIS should  
24 recognize<sup>235</sup> that several actions, in particular those that  
25 involve the construction of public facilities or structures  
26 (e.g., highways, airports, sewer systems, water resource  
27 projects, etc.) may well stimulate or induce secondary  
28 effects. These secondary effects may be equally important as,  
29 or more important than, primary effects, and shall be  
30 thoroughly discussed to fully describe the probable impact of  
31 the proposed action on the environment. The population and  
32 growth impacts of an action shall be estimated if expected to  
33 be significant, and an evaluation shall be<sup>236</sup> made of the  
34 effects of any possible change in population patterns or  
35 growth upon the resource base, including but not limited to  
36 land use, water, and public services, of the area in question.  
37 Also, if the proposed action constitutes a direct or indirect  
38 source of pollution as determined by any governmental agency,  
39 necessary data regarding these impacts<sup>237</sup> shall be incorporated  
40 into the EIS. The significance of the impacts shall be  
41 discussed in terms of subsections (j), (k), (l), and (m).

42 J. The draft EIS shall include in a separate and distinct section  
43 a description of the relationship between local short-term  
44 uses of humanity's environment and the maintenance and  
45 enhancement of long-term productivity. The extent to which the

1 proposed action involves trade-offs among short-term and long-  
2 term gains and losses shall be discussed. The discussion shall  
3 include the extent to which the proposed action forecloses  
4 future options, narrows the range of beneficial uses of the  
5 environment, or poses long-term risks to health or safety. In  
6 this context, short-term and long-term do not necessarily  
7 refer to any fixed time periods, but shall be viewed in terms  
8 of the environmentally significant consequences of the  
9 proposed action.

10 K. The draft EIS shall include in a separate and distinct section  
11 a description of all irreversible and irretrievable  
12 commitments of resources that would be involved in the  
13 proposed action should it be implemented. Identification of  
14 unavoidable impacts and the extent to which the action makes  
15 use of non-renewable resources during the phases of the  
16 action, or irreversibly curtails the range of potential uses  
17 of the environment shall also be included. The possibility of  
18 environmental accidents resulting from any phase of the action  
19 shall also be considered. Agencies shall avoid construing the  
20 term "resources" to mean only the labor and materials devoted  
21 to an action. "Resources" also means the natural and cultural  
22 resources committed to loss or destruction by the action.

23 L. The draft EIS shall address all probable adverse environmental  
24 effects ~~which that~~<sup>238</sup> cannot be avoided. Any adverse effects  
25 such as water or air pollution, urban congestion, threats to  
26 public health, or other consequences adverse to environmental  
27 goals and guidelines established by environmental response  
28 laws, coastal zone management laws, pollution control and  
29 abatement laws, and environmental policy such as that found in  
30 chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H,  
31 342I, 342J, 342L, 342N, 342P, and 344, HRS, shall be included,  
32 including those effects discussed in other ~~actions~~ subsections  
33 of this ~~paragraph~~ section<sup>239</sup> ~~which that~~<sup>240</sup> are adverse and  
34 unavoidable under the proposed action. Also, the rationale for  
35 proceeding with a proposed action, notwithstanding unavoidable  
36 effects, shall be clearly set forth in this section. The draft  
37 EIS shall indicate what other interests and considerations of  
38 governmental policies are thought to offset the adverse  
39 environmental effects of the proposed action. The statement  
40 shall also indicate the extent to which these stated  
41 countervailing benefits could be realized by following  
42 reasonable alternatives to the proposed action that would  
43 avoid some or all of the adverse environmental effects.

44 M. The draft EIS shall consider mitigation measures proposed to  
45 avoid, minimize, rectify, or reduce ~~impact~~ impacts<sup>241</sup>,

1 including provision for compensation for losses of cultural,  
2 community, historical, archaeological, water,<sup>242</sup> fish and  
3 wildlife resources, including the acquisition of land, waters,  
4 and interests therein. Description of any mitigation measures  
5 included in the action plan to reduce significant,  
6 unavoidable, adverse impacts to insignificant levels, and the  
7 basis for considering these levels acceptable shall be  
8 included. Where a particular mitigation measure has been  
9 chosen from among several alternatives, the alternative<sup>243</sup>  
10 measures shall be discussed and reasons given for the choice  
11 made. ~~Included~~ The draft EIS shall include, where possible ~~and~~  
12 ~~appropriate~~<sup>244</sup>, ~~should be~~ specific reference to the timing of  
13 each step proposed to be taken in ~~the~~ any<sup>245</sup> mitigation  
14 process, what performance bonds, if any, may be posted, and  
15 what other provisions are proposed to assure that the  
16 mitigation measures will in fact be taken.

- 17 N. The draft EIS shall include a separate and distinct section  
18 that summarizes unresolved issues and contains either a  
19 discussion of how such issues will be resolved prior to  
20 commencement of the action, or what overriding reasons there  
21 are for proceeding without resolving the problems.
- 22 O. The draft EIS shall include a separate and distinct section  
23 that contains a list identifying all governmental agencies,  
24 other organizations and private individuals consulted in  
25 preparing the statement, and the identity of the persons,  
26 firms, or agency preparing the statement, by contract or other  
27 authorization, shall be disclosed.
- 28 P. The draft EIS shall include a separate and distinct section  
29 that contains reproductions of all substantive comments and  
30 responses made during the consultation process. A list of  
31 those persons or agencies who were contacted as well as those  
32 who were<sup>246</sup> consulted and had no comment shall be included in  
33 the draft EIS.

34  
35 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
36 (Imp: HRS §343-2, 343-5, 343-6)  
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220 *Housekeeping. Previous Council recommendation.*

221 *Segmentation. Cumulative Impacts. Previous Council recommendation.*

222 *Cultural Impacts. Previous Council recommendation.*

223 *Housekeeping. Previous Council recommendation.*

224 *Alternatives Analysis.*  
Incorporates language from 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. Source: <http://ceq.hss.doe.gov/nepa/regs/ceq/1502.htm#1502.14>

225 *Housekeeping. Previous Council recommendation.*

226 *Housekeeping. Previous Council recommendation.*

227 *Cultural Impacts. Previous Council recommendation.*

228 *Housekeeping. Previous Council recommendation.*

229 *Housekeeping. Previous Council recommendation.*

230 *Planning. Previous Council recommendation.*  
Clarifies that not only land use plans, but natural resource plans such as water use plans should also be addressed.

231 *Planning. Previous Council recommendation.*  
Clarifies that not only land use plans, but natural resource plans such as water use plans should also be addressed.

232 *Planning. Previous Council recommendation.*

233 *Planning. Previous Council recommendation.*

234 *Housekeeping. Previous Council recommendation.*

235 *Housekeeping. Previous Council recommendation.*

236 *Housekeeping. Previous Council recommendation.*

237 *Housekeeping. Previous Council recommendation.*

238 *Housekeeping. Previous Council recommendation.*

239 *Housekeeping. Previous Council recommendation.*

240 *Housekeeping. Previous Council recommendation.*

241 *Housekeeping. Previous Council recommendation.*

242 *Impacts. Previous Council recommendation.*

243 *Alternatives Analysis. Previous Council recommendation.*

244 *Housekeeping.*  
Redundant language.

245 *Housekeeping. Previous Council recommendation.*

246 *Commenting. Previous Council recommendation.*

1 §11-200-18 Content Requirements; Final Environmental Impact  
2 Statement

3 The final EIS shall consist of:

- 4 A. The draft EIS prepared in compliance with section 11-200-17,  
5 as<sup>247</sup> revised to incorporate substantive comments received  
6 during the consultation and review processes;
- 7 B. Reproductions of all letters received containing substantive  
8 questions, comments, or recommendations and, as applicable,  
9 summaries of any scoping meetings held;
- 10 C. A list of persons, organizations, and public agencies  
11 commenting on the draft EIS;
- 12 D. The responses of the applicant or proposing agency to each  
13 substantive question, comment, or recommendation received in  
14 the review and consultation processes-; and<sup>248</sup>
- 15 E. The text of the final EIS which shall be written in a format  
16 ~~which~~ that<sup>249</sup> allows the reader to easily distinguish changes  
17 made to the text of the draft EIS.

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
20 (Imp: HRS §343-2, 343-5, 343-6)

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<sup>247</sup> *Housekeeping. Previous Council recommendation.*

<sup>248</sup> *Housekeeping. Previous Council recommendation.*

<sup>249</sup> *Housekeeping. Previous Council recommendation.*

DRAFT

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

2 In developing the draft and final<sup>250</sup> EIS, preparers shall make  
3 every effort to convey the required information succinctly in a form  
4 easily understood, both by members of the public and by public  
5 decision-makers, giving attention to the substance of the information  
6 conveyed rather than to the particular form, or length, ~~or detail~~<sup>251</sup> of  
7 the statement. The scope of the statement may vary with the scope of  
8 the proposed action and its impact. Data and analyses in a statement  
9 shall be commensurate with the importance of the impact, and less  
10 important material may be summarized, consolidated, or simply  
11 referenced. Statements shall indicate at appropriate points in the  
12 text any underlying studies, reports, and other information obtained  
13 and considered in preparing the statement, including cost benefit  
14 analyses and reports required under other legal authorities. Care  
15 shall be taken to concentrate on important issues and to ensure that  
16 the statement remains an essentially self-contained document, capable  
17 of being understood by the reader without the need for undue cross-  
18 reference.

19  
20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
21 (Imp: HRS §343-6)  
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<sup>250</sup> *Housekeeping. Previous Council recommendation.*

<sup>251</sup> *Housekeeping.*

Unnecessary text to convey meaning.

DRAFT

- 1 §11-200-20 Filing of an Environmental Impact Statement  
2 A. The proposing agency or applicant shall file the original  
3 (signed) draft EIS with the accepting authority, along with a  
4 minimum number of copies determined by the accepting  
5 authority. Simultaneously, ~~a minimum number of four copies~~ one  
6 hard copy and one electronic copy<sup>252</sup> of the draft EIS shall be  
7 filed with at the office in accordance with section 11-200-  
8 3<sup>253</sup>.
- 9 B. The proposing agency or applicant shall file the original  
10 (signed) final EIS with the accepting authority, along with a  
11 minimum number of copies determined by the accepting  
12 authority. Simultaneously, ~~four copies~~ one hard copy and one  
13 electronic copy<sup>254</sup> of the final EIS shall be filed with the  
14 office in accordance with section 11-200-3<sup>255</sup>.
- 15 ~~C. An EIS may be filed at any time at the office by the proposing~~  
16 ~~agency or applicant in accordance with section 11-200-3.~~<sup>256</sup>
- 17 C. <sup>257</sup> The proposing agency or applicant shall sign and date the  
18 original copy of the draft or final EIS and shall indicate  
19 that the statement and all ancillary documents were prepared  
20 under the signatory's direction or supervision and that the  
21 information submitted, to the best of the signatory's  
22 knowledge,<sup>258</sup> fully addresses document content requirements as  
23 set forth in sections 11-200-17 and 11-200-18, as appropriate.

24  
25 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
26 (Imp: HRS §343-3, 343-6)  
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<sup>252</sup> *OEQC. Modernization. Bulletin.*

OEQC requests that preparers not send it four copies. One hard copy and one digital copy are sufficient.

NOTE: OEQC suggests establishing a mechanism for identifying and storing official, notarized versions for occasions where a legal case requires an official version of the document. OEQC does not have the physical space or security to store such documents on everyone's behalf.

<sup>253</sup> *OEQC. Modernization. Previous Council recommendation.*

<sup>254</sup> *OEQC. Modernization. Bulletin.*

OEQC requests that preparers not send it four copies. One hard copy and one digital copy are sufficient.

NOTE: OEQC suggests establishing a mechanism for identifying and storing official, notarized versions for occasions where a legal case requires an official version of the document. OEQC does not have the physical space or security to store such documents on everyone's behalf.

<sup>255</sup> *OEQC. Modernization. Previous Council recommendation.*

<sup>256</sup> *OEQC. Bulletin.*

This provision is unnecessary.

<sup>257</sup> *Housekeeping. Previous Council recommendation.*

<sup>258</sup> *Housekeeping. Previous Council recommendation.*

1 §11-200-21 Distribution

2 The office shall be responsible for the publication of the notice  
3 of availability of the EIS in its periodic<sup>259</sup> bulletin. The office  
4 shall develop a distribution list of reviewers (i.e., persons and  
5 agencies with jurisdiction or expertise in certain areas relevant to  
6 various actions) and a list of public depositories, which shall  
7 include public libraries, where copies of the statements shall be  
8 available, ~~and to the extent possible, the~~. The<sup>260</sup> proposing agency or  
9 applicant shall make copies of the EIS available to individuals  
10 requesting the EIS. The office's distribution list may be developed  
11 cooperatively among the applicant or proposing agency, the accepting  
12 authority, and the office, ~~and~~ provided that<sup>261</sup> the office shall be  
13 responsible for determining the final list. The applicant or proposing  
14 agency shall directly distribute the required copies to those on the  
15 distribution list after the office has verified to the applicant or  
16 proposing agency the accuracy of the distribution list. For final  
17 statements, the agency or applicant shall give the commentor an option  
18 of ~~requesting~~ obtaining<sup>262</sup> a copy of the final EIS or portions thereof.  
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20 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
21 (Imp: HRS §343-3, 343-5, 343-6)  
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- <sup>259</sup> *Bulletin. Previous Council recommendation.*  
<sup>260</sup> *Housekeeping.*  
Removes unnecessary language.  
<sup>261</sup> *Housekeeping. Previous Council recommendation.*  
<sup>262</sup> *Public Review. Previous Council recommendation.*

DRAFT

Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements Public review and response requirements for draft EISs and addenda

§11-200-22 Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements Public review and response requirements for draft EISs and addenda<sup>263</sup>

- A. Public review shall not substitute for early and open discussion with interested persons and agencies<sup>264</sup> concerning the environmental impacts of a proposed action. Review of the draft<sup>265</sup> EIS shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.
- B. The period for public review and for submitting written comments shall commence ~~as of~~ on the date that<sup>266</sup> notice of availability of the draft EIS is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the approving agency or accepting authority, whichever is applicable, with a copy of the comments to the applicant or proposing agency and to the office<sup>267</sup>, shall be received or postmarked to the approving agency or accepting authority, within ~~said~~ the<sup>268</sup> forty-five-day comment<sup>269</sup> period. Any comments outside of the forty-five day comment period need not be considered or responded to. However, for a proposed site or for the expansion of an existing correctional facility, pursuant to section 353-16.35, HRS, this forty-five-day comment period shall be a sixty-day comment period.<sup>270</sup>
- C. The proposing agency or applicant shall respond in writing to ~~the~~ all<sup>271</sup> comments received or postmarked during the forty-five-day review period and shall incorporate the comments in and append the responses in to<sup>272</sup> the final EIS. Because responses are provided in the final EIS, it is not necessary to send an individual response letter to each person who comments.<sup>273</sup> The response to comments shall include:
1. Point-by-point discussion of the validity, significance, and relevance of comments; and
  2. Discussion as to how each comment was evaluated and considered in ~~planning the proposed action~~ revising the draft EIS<sup>274</sup>.
- The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters ~~reproduced~~ included in the ~~text of the~~ final EIS shall ~~indicate~~ reproduce verbatim the<sup>275</sup> changes that have been made to the text of the draft EIS. The response shall describe the disposition of

Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements Public review and response requirements for draft EISs and addenda

1 significant environmental issues raised (e.g., revisions to  
2 the proposed project to mitigate anticipated impacts or  
3 objections, ~~etc.~~<sup>276</sup>). In particular, the issues raised when the  
4 applicant's or proposing agency's position is at variance with  
5 recommendations and objections raised in the comments shall be  
6 addressed in detail, giving reasons why specific comments and  
7 suggestions were not accepted, and any factors of overriding  
8 importance<sup>277</sup> warranting an override of the suggestions. If a  
9 number of comments are identical or very similar, the  
10 proposing agency or applicant may group the comments and  
11 prepare a single answer for each group. Comments may be  
12 summarized if they are especially voluminous. The comments or  
13 summaries must be attached to the final EIS regardless of  
14 whether the agency or applicant believes they merit individual  
15 discussion in the body of the final EIS.<sup>278</sup>

16 D. An addendum document<sup>279</sup> to a draft ~~environmental impact~~  
17 ~~statement EIS~~<sup>280</sup> shall reference the original draft  
18 ~~environmental impact statement EIS to which it attaches to~~<sup>281</sup>  
19 and comply with all applicable filing, public review, and  
20 comment requirements set forth in ~~subchapter 7~~ this  
21 subchapter<sup>282</sup>.

22  
23 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
24 (Imp: HRS §343-5, 343-6)  
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263 *Public Review. Previous Council recommendation.*  
264 *Housekeeping.*  
265 *Housekeeping. Previous Council recommendation.*  
266 *Housekeeping. Previous Council recommendation.*  
267 *OEQC. Previous Council recommendation.*  
268 *Housekeeping. Previous Council recommendation.*  
269 *Public Comment. Housekeeping. Previous Council recommendation.*  
270 *Commenting. Previous Council recommendation.*  
271 *Housekeeping. Previous Council recommendation.*  
272 *Housekeeping. Previous Council recommendation.*  
273 *Commenting.*

Because responses are provided in the FEIS, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be too burdensome. Even though NEPA does not have this requirement, many agencies and members of the public approve of the NEPA approach.

274 *Commenting. Previous Council recommendation.*  
275 *Housekeeping. Previous Council recommendation.*  
276 *Housekeeping. Previous Council recommendation.*  
277 *Housekeeping. Previous Council recommendation.*  
278 *Commenting.*

NEPA also provides guidance to allow preparers to group and summarize comments that are identical or very similar and especially voluminous. This allows for shorter documents while still allowing all members of the public to comment on a proposed action and have a response to their comments.

Language adapted from CEQ 40 Questions, Question #29a, Responses to Comments.

Source: <http://ceq.hss.doe.gov/NEPA/regs/40/20-29.HTM#29>

29a. Responses to Comments. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentator on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentator said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

279 *Housekeeping. Previous Council recommendation.*  
280 *Housekeeping. Previous Council recommendation.*

S11-200-22

~~Public Review of Environmental Impact Statements and Addenda to Draft Environmental Impact Statements~~ Public review and response requirements for draft EISs and addenda

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<sup>281</sup> *Housekeeping. Previous Council recommendation.*

<sup>282</sup> *Housekeeping. Previous Council recommendation.*

DRAFT

## 1 §11-200-23 Acceptability

2 A. Acceptability of a statement shall be evaluated on the basis  
3 of whether the statement, in its completed form, represents an  
4 informational instrument ~~which~~ that<sup>283</sup> fulfills the ~~definition~~  
5 ~~of an EIS~~ intent and provisions of chapter 343, HRS,<sup>284</sup> and  
6 adequately discloses and describes all identifiable  
7 environmental impacts and satisfactorily responds to review  
8 comments.

9 B. A statement shall be deemed to be an acceptable document by  
10 the accepting authority or approving agency only if all of the  
11 following criteria are satisfied:

- 12 1. The procedures for assessment, consultation process,  
13 review, and the preparation and submission of the  
14 statement, have all been completed satisfactorily as  
15 specified in this chapter;
- 16 2. The content requirements described in this chapter have  
17 been satisfied; and
- 18 3. Comments submitted during the review process have  
19 received responses satisfactory to the accepting  
20 authority, or approving agency, and have been  
21 appropriately incorporated in and appended to<sup>285</sup> the  
22 statement.

23 C. For actions proposed by agencies, the proposing agency may  
24 request the office to make a recommendation regarding the  
25 acceptability or non-acceptability of the EIS. In all cases  
26 involving state funds or lands, the governor or an authorized  
27 representative shall have final authority to accept the EIS.  
28 In cases involving only county funds or lands, the mayor of  
29 the respective county or an authorized representative shall  
30 have final authority to accept the EIS. In the event that the  
31 action involves both state and county lands or funds, the  
32 governor or an authorized representative shall have final  
33 authority to accept the EIS. The accepting authority shall take  
34 prompt measures to determine the acceptability or  
35 nonacceptability of the proposing agency's statement. ~~In the~~  
36 ~~event that the action involves both state and county lands or~~  
37 ~~funds, the governor or an authorized representative shall have~~  
38 ~~final authority to accept the EIS.~~<sup>286</sup> Upon acceptance or non-  
39 acceptance of the EIS, a notice shall be filed by the  
40 appropriate accepting authority with both the proposing agency  
41 and the office. For any non-accepted EIS, the notice shall  
42 contain specific findings and reasons for non-acceptance. The  
43 office shall publish notice of the determination of acceptance  
44 or non-acceptance in the periodic bulletin in accordance with  
45 section 11-200-3. Acceptance of a required statement shall be

1 a condition precedent to the use of state or county lands or  
2 funds in implementing the proposed action.

3 D. For actions proposed by applicants requiring approval from an  
4 agency, the applicant or ~~accepting authority~~ approving  
5 agency<sup>287</sup> may request the office to make a recommendation  
6 regarding the acceptability or non-acceptability of the  
7 statement. If the office decides to make a recommendation, it  
8 shall submit the recommendation to the applicant and the  
9 approving agency within the thirty-day period requiring an  
10 approving agency to determine the acceptability of the final  
11 EIS ~~and as~~<sup>288</sup> described in section 343-5(c), HRS. Upon  
12 acceptance or non-acceptance by the approving agency, the  
13 agency shall notify the applicant of its determination, and  
14 provide specific findings and reasons. The agency shall also  
15 provide a copy of this determination to the office for  
16 publication ~~of a notice~~<sup>289</sup> in the periodic bulletin. Acceptance  
17 of the required EIS shall be a condition precedent to approval  
18 of the request and commencement of the proposed action. An  
19 approving agency shall take prompt measures to determine the  
20 acceptability or non-acceptability of the applicant's  
21 statement. The agency shall notify the applicant and the  
22 office of the acceptance or non-acceptance of the final EIS  
23 within thirty days of the final EIS submission<sup>290</sup>, provided  
24 that the thirty-day period may, at the request of the  
25 applicant, be extended ~~at the request of the applicant~~<sup>291</sup> for a  
26 period not to exceed fifteen days. ~~The request shall be, when~~  
27 ~~the request is~~<sup>292</sup> made to the accepting authority in writing.  
28 Upon receipt of an applicant's written<sup>293</sup> request for an  
29 extension of the thirty-day acceptance period, the accepting  
30 authority shall notify the office and applicant in writing of  
31 its decision to grant or deny the request. The notice shall be  
32 accompanied by a copy of the applicant's request. An extension  
33 of the thirty-day acceptance period shall not be allowed  
34 merely for the convenience of the accepting authority. In the  
35 event that the agency fails to make a determination of  
36 acceptance or non-acceptance for the statement within thirty  
37 days of the receipt of the final EIS, then the statement shall  
38 be deemed accepted.

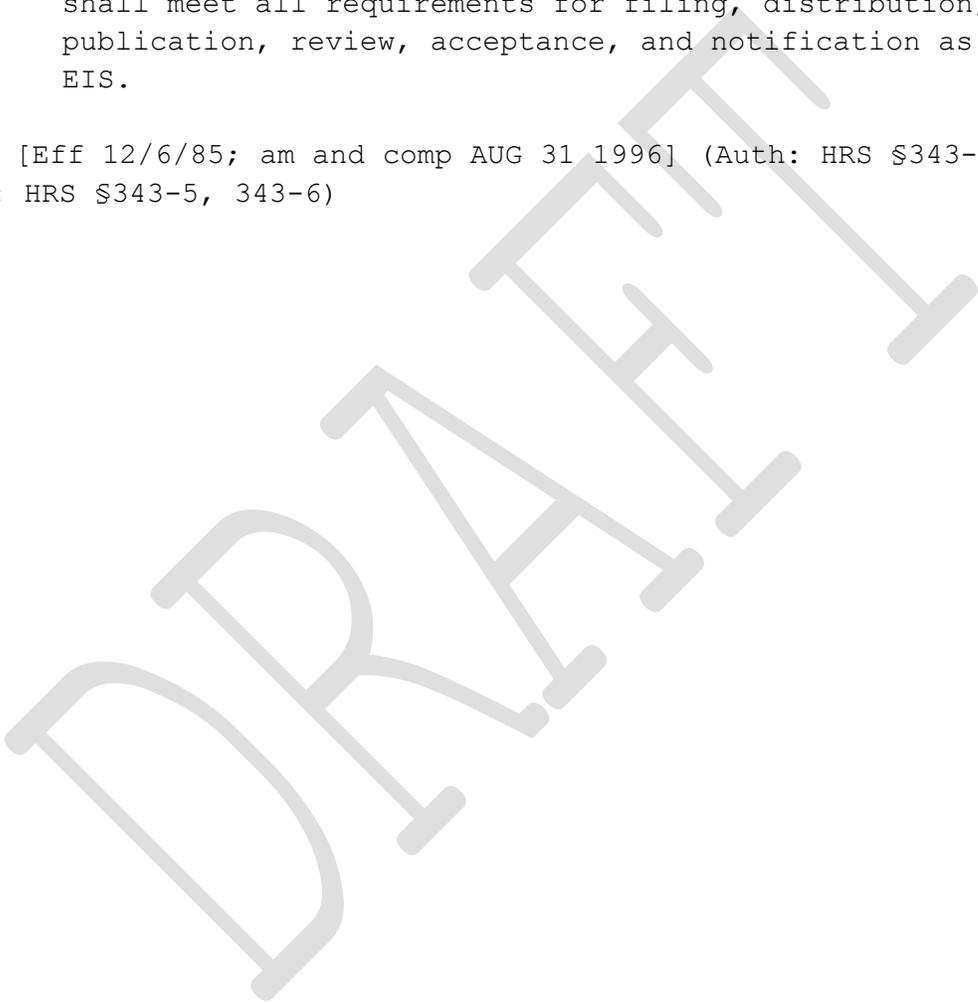
39 E. A non-accepted EIS may be revised by a proposing agency or  
40 applicant. The revision shall take the form of a revised draft  
41 EIS ~~document~~<sup>294</sup> which shall fully address the inadequacies of  
42 the non-accepted EIS and shall completely and thoroughly  
43 discuss the changes made. The requirements for filing,  
44 distribution, publication of availability for review,  
45 acceptance or non-acceptance, and notification and publication

1 of acceptability shall be the same as the requirements  
2 prescribed by sections 11-200-20, 11-200-21, 11-200-22, and  
3 11-200-23 for an EIS submitted for acceptance. In addition,  
4 the revised draft EIS shall be evaluated for acceptability on  
5 the basis of whether it satisfactorily addresses the findings  
6 and reasons for non-acceptance.

7 F. A proposing agency or applicant may withdraw an EIS by sending  
8 a letter to the office informing the office of the agency's or  
9 applicant's withdrawal. Subsequent resubmittal of the EIS  
10 shall meet all requirements for filing, distribution,  
11 publication, review, acceptance, and notification as a new  
12 EIS.

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

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<sup>283</sup> *Housekeeping. Previous Council recommendation.*

<sup>284</sup> *Housekeeping. Previous Council recommendation.*

<sup>285</sup> *Housekeeping. Previous Council recommendation.*

<sup>286</sup> *Accepting Authority. Previous Council recommendation.*

<sup>287</sup> *Housekeeping.*

Incorrect use of terms; see §11-200-2, definitions of "accepting authority" and "approving agency."

<sup>288</sup> *Housekeeping. Previous Council recommendation.*

<sup>289</sup> *Housekeeping. Previous Council recommendation.*

<sup>290</sup> *Housekeeping. Previous Council recommendation.*

<sup>291</sup> *Housekeeping.*

<sup>292</sup> *Housekeeping. Previous Council recommendation.*

<sup>293</sup> *Time Limit.*

By inserting "written," a recorded communication (e.g., letter, email) provides a record that the applicant agreed and initiates the time period.

<sup>294</sup> *Housekeeping. Previous Council recommendation.*



1           **Subchapter 8 Appeals**

2           §11-200-24 Appeals to the Council

3           An applicant, within sixty days after non-acceptance of a  
4 statement by an agency, may appeal the non-acceptance to the council,  
5 which within ~~thirty~~ sixty<sup>295</sup> days of receipt of the appeal, shall  
6 notify the applicant of its determination. In any affirmation or  
7 reversal of an appealed non-acceptance, the council shall provide the  
8 applicant and the agency with specific findings and reasons for its  
9 determination. The agency shall abide by the council's decision.

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

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<sup>295</sup> *Acceptance. Appeals. Previous Council recommendation.*

Because the Council regularly schedules its meetings on a monthly basis, the thirty-day requirement is difficult for the Council to guarantee quorum and make a determination. Sixty days would provide the Council time to schedule a meeting, ensure quorum, and duly consider the applicant's appeal.

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**Subchapter 9 National Environmental Policy Act**

§11-200-25 National Environmental Policy Act Actions:  
Applicability to Chapter 343, HRS<sup>296</sup>

When ~~the situation occurs where~~<sup>297</sup> a certain action will be subject both to the National Environmental Policy Act of 1969 (Public Law 91-190, as amended by Public Law 94-52 and Public Law 94-83; 42 U.S.C. §4321-4347) and chapter 343, HRS, the following shall occur:

A. The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the ~~National Environmental Policy Act~~ NEPA<sup>298</sup>, shall notify the responsible federal agency, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS) ~~of the situation~~<sup>299</sup>.

B. Where a federal agency determines that the proposed action is exempt from review under the NEPA, the determination does not automatically constitute an exemption for the purposes of this chapter. In such cases, state and local agencies remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county agency determination.<sup>300</sup>

C. Where a federal agency issues a FONSI and concludes that a statement is not required under the NEPA, the determination does not automatically constitute compliance with this chapter. In such cases, state and local agencies remain responsible for compliance with this chapter. However, the federal FONSI may be considered in the state or county agency determination.<sup>301</sup>

D. ~~B.~~ The National Environmental Policy Act NEPA<sup>302</sup> requires that draft statements be prepared by the responsible federal agency. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal agency, the draft and final federal statements may be submitted to comply with this chapter<sup>303</sup>, so long as the federal EIS satisfies the EIS content requirements of this chapter and is not found to be inadequate under the NEPA by a court; by the council on environmental quality (CEQ) (or is at issue in predecision referral to CEQ) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.<sup>304</sup> The responsible federal agency's supplemental statement requirements shall apply in these cases in place of this chapter's supplemental statement requirements.<sup>305</sup>

- 1 E. When the responsibility of preparing an EIS is delegated to a  
 2 state or county agency, this chapter shall apply in addition  
 3 to federal requirements under the ~~National Environmental~~  
 4 ~~Policy Act~~ NEPA<sup>306</sup>. The office and agencies shall cooperate  
 5 with federal agencies to the fullest extent possible to reduce  
 6 duplication between federal and state requirements. This  
 7 cooperation, to the fullest extent possible, shall include  
 8 joint ~~environmental impact statements~~ EISs<sup>307</sup> with concurrent  
 9 public review and processing at both levels of government.  
 10 Where federal law has ~~environmental impact statement~~ EIS<sup>308</sup>  
 11 requirements in addition to but not in conflict with this  
 12 chapter, the office and agencies shall cooperate in fulfilling  
 13 the requirements so that one document shall comply with all  
 14 applicable laws.
- 15 F. ~~E.~~ In all actions where the use of state land or funds is  
 16 proposed, the final statement shall be submitted to the  
 17 governor or an authorized representative. In all actions when  
 18 the use of county land or funds is proposed, the final  
 19 statement shall be submitted to the mayor, or an authorized  
 20 representative. The final statement in these instances shall  
 21 first be accepted by the governor or mayor (or an authorized  
 22 representative), prior to the submission of the same to the  
 23 ~~Environmental Protection Agency~~<sup>309</sup> responsible federal agency.
- 24 G. ~~D.~~ Any acceptance obtained pursuant to ~~paragraphs (1) to (3)~~  
 25 this section<sup>310</sup> shall satisfy chapter 343, HRS, and no other  
 26 statement for the proposed action shall be required.

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

<sup>296</sup> *Joint HEPA-NEPA.*  
 The existing rules address how state agencies should cooperate with federal agencies when both NEPA and HEPA require an EIS. It is silent on situations where a federal agency may issue an exemption under NEPA, but HEPA may require the preparation of an environmental assessment or EIS.

Federal and state agencies that frequently perform joint HEPA-NEPA documents have reported to the Rules Committee that they have difficulty in producing one document that satisfies both laws. Often, either the document is awkwardly structured or the agency resorts to producing two documents with similar information but different structures. Also, differences in supplemental EIS requirements can jeopardize federal funding for state or county projects that require two supplemental EISs on different schedules.

The Rules Committee examined how other U.S. States resolve this tension. It offers this language as an initial proposal to begin a dialogue on how to improve the joint HEPA-NEPA process.

CEQ 40 FAQs #22, State and Federal Agencies as Joint Lead Agencies, advises agencies at all levels of government to cooperate fully. 40 CFR 1506.2 "strongly urges state and local agencies and the relevant federal agencies to cooperate fully

with each other" so that one document satisfies both NEPA and the "little NEPA" state law.

"The Joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers."

The Rules Committee examined the Massachusetts and Washington approaches.

Massachusetts state law, Chapter 30: Section 62G - "In the case of projects for which an environmental impact statement is required under the National Environmental Policy Act of 1969, draft and final environmental impact statements may be submitted in lieu of environmental impact reports."

Washington state law, RCW Chapter 43.21C.150, states, "The requirements of RCW 43.21C.030(2)(c) [government agency trigger for SEPA] pertaining to the preparation of a detailed statement by branches of government shall not apply when an adequate detailed statement has been previously prepared pursuant to the national environmental policy act of 1969, in which event said prepared statement may be utilized in lieu of a separately prepared statement under RCW 43.21C.030(2)(c)."

Washington state administrative code (WAC 197-11-610) states:

- (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following WAC 197-11-600 [When to use existing documents] and WAC 197-11-630 [Adoption of existing documents].
- (2) A NEPA environmental assessment may be adopted to satisfy requirements for determination of nonsignificance or EIS, if the requirements of WAC 197-11-600 and WAC 197-11-630 are met.
- (3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:
  - a. The requirements of WAC 197-11-600 and WAC 197-11-630 are met (in which case the procedures of Parts Three through Five of these rules shall not apply); and
  - b. The federal EIS is not found inadequate: (i) By a court; (ii) by the council on environmental quality (CEQ) (or is at issue in predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.
- (4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria of WAC 197-11-600(3) are met.
- (5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

The Rules Committee notes, however, NEPA does not sufficiently address all issues of concern in Hawaii. In particular, it does not address well cultural impacts, which the State Legislature declared to be of especial importance in environmental review. The Rules Committee inserted the provision to comply with t to ensure that unique issues not covered under NEPA are still addressed.

<sup>297</sup> Housekeeping. Previous Council recommendation.

<sup>298</sup> Housekeeping.

<sup>299</sup> *Housekeeping. Previous Council recommendation.*

<sup>300</sup> *Joint HEPA-NEPA.*

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

<sup>301</sup> *Joint HEPA-NEPA.*

Drawn almost verbatim from NY HRS §617.15(b) Actions involving a federal agency. Clarifies that a federal agency may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes.

<sup>302</sup> *Housekeeping.*

<sup>303</sup> *Supplementals.*

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

<sup>304</sup> *Joint HEPA-NEPA.*

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

<sup>305</sup> *Supplemental. Joint HEPA-NEPA.*

This clause is added to clarify that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>306</sup> *Joint HEPA-NEPA.*

Clarifies that the document being produced by the state or county agency is to fulfill both HEPA and NEPA requirements.

<sup>307</sup> *Housekeeping. Previous Council recommendation.*

<sup>308</sup> *Housekeeping. Previous Council recommendation.*

<sup>309</sup> *Housekeeping. Previous Council recommendation.*

<sup>310</sup> *Housekeeping.*

**Subchapter 10 Supplemental Statements**

§11-200-26 General Provisions<sup>311</sup>

- A. A statement that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no ~~other supplemental~~<sup>312</sup> statement for that proposed action shall be required, ~~to the extent that the action has not changed substantively in size, scope, intensity, use, location or timing, among other things.~~<sup>313</sup> If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter.<sup>314</sup> unless:
1. The project has changed substantively in the following characteristics: size, scope, use, location or timing, among other things, which may have a significant effect;  
or<sup>315</sup>
  2. Newly discovered information indicating significant adverse environmental effects, which was not known and could not have been known at the time the EIS was accepted as complete, becomes available.<sup>316</sup>
- B. In the case of newly discovered information, the decision to require preparation of a supplemental EIS must be based on the following criteria:
1. The information can be from any source.
  2. The information must be newly discovered. It cannot be information that could have been included in comments filed in the original draft EIS or final EIS.
  3. The information must be important, indicating probably significant adverse environmental impacts.
  4. The information must not have been addressed in the prior EIS, or must have been inadequately addressed.<sup>317</sup>
- C. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the statement associated with that action shall be deemed to comply with this chapter.

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

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<sup>311</sup> *Supplementals.*

Note: Added section letters and numbers to make the structure of the section easier to understand.

The Rules Committee received feedback from multiple agencies and the public on the purpose and scope of supplemental EISs. During a Rules Committee meeting held on February 15, 2012, about 30 members of the public offered comments on supplemental EISs. Among the issues raised were:

- The role of a supplemental EIS in the planning and permitting process (i.e., for ministerial or discretionary permits),
- A desire for greater clarity on when a supplemental is needed (i.e., shelf life),
- What kind of change should require a supplemental EIS (project, environment, and/or information), and
- How NEPA and other U.S. States address supplemental EISs.

The Rules Committee observes that there is consensus among all stakeholders that supplemental EISs have a role in the environmental review process. At a minimum, there is consensus that if a project changes significantly, then a supplemental EIS may be warranted. However, consensus appears to be lacking on what specific conditions require a supplemental EIS.

The Rules Committee notes that any amendments to HAR 11-200 must be within the boundaries of Chapter 343, HRS, and any standing legal decisions of the Hawaii State Supreme Court and Intermediate Court of Appeals.

HRS Chapter §343-2, Definitions, defines "approval" as a discretionary consent required from an agency prior to actual implementation of an action. "Discretionary consent" is defined as 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." Chapter 343, HRS, does not speak to what specific approvals are considered ministerial or discretionary. As a general principle, Chapter 343, HRS, defers to agencies to make decisions in the EIS process, i.e., when an action is triggered, may be exempted, and requires an EIS or supplemental EIS. The Rules Committee does not believe it is the role of the environmental review process to decide which permits are considered discretionary or ministerial. It urges state and county agencies to distinguish their approvals to provide more clarity to other agencies, applicants, and the public.

For determining when a supplemental EIS is needed, the Rules Committee believes that a change in the environment may warrant the preparation of a supplemental EIS, not only a change in the proposed project. This is consistent with the purpose of Chapter 343, HRS, and environmental review practice throughout the U.S.

The Rules Committee is cognizant that there are challenges in setting boundaries on what constitutes a change in the environment or when enough time has passed that a document should be examined for whether a supplemental EIS may be required. Agencies had various preferences; some preferred a "shelf life" where after a certain time period the document expires or is "presumed stale," which NEPA suggests as happening after 7 years. Under NEPA, each federal agency has its own shelf life, some as short as 3 years, others 10 years or longer. Having each agency set its own shelf life under HEPA would seem too confusing for all involved; having one shelf life for all agencies also appears unequally unfeasible.

Other agencies did not want a shelf life because it could jeopardize federal or investment funding. Instead, they seek greater clarity on what constitutes a change in the action or environment such that a supplemental EIS is warranted. The Rules Committee agrees with these concerns about shelf life and is not recommending adding one to the rules.

Instead, the Rules Committee recommends having agencies exercise discretion on when a supplemental EIS is required based on certain criteria. This is consistent with all other steps of the EIS process under HEPA, where the agency exercises its judgment on when to issue an exemption, require an EIS, and if the EIS is acceptable.

*Turtle Bay* (2010) was the first case to address the role of supplemental EISs in HEPA. However, other U.S. States have had this issue litigated. The Rules Committee looked to other U.S. states for how they have resolved these issues through law or the courts. To provide more clarity on what new information justifies requiring a supplemental EIS, language from California, New York, and Washington have been incorporated.

The Rules Committee also notes that these states have other provisions that create in effect a supplemental environmental assessment or, as in Washington and California, an "addendum" that allows an agency or applicant to update information in an EIS in place of a supplemental EIS. This "addendum" is allowed when changes in the project or the new information requires additional information, but does not substantially change the analysis of significant effects or alternatives. Please refer to WASH. ADMIN. CODE § 197-11-706 and CAL. CODE REG., tit 14, § 15164(c) & C for more information. This may be worth adding to HEPA. Note, HEPA already uses the term "addendum" to make minor clerical adjustments to an EA or EIS, so if the California approach were to be adopted, terminology would require adjustment.

<sup>312</sup> *Supplementals.*

Replaced the word "other" to remove ambiguity about whether the supplemental document is considered a separate document. It is not, therefore the word "supplemental" is inserted to clarify that the original document is being supplemented.

<sup>313</sup> *Supplementals.*

The existing HAR language is relocated below.

<sup>314</sup> *Supplementals.*

This language is deleted because it leads to confusion on the purpose of a supplemental EIS and the triggering language replaced.

<sup>315</sup> *Supplementals.*

The existing HAR language is relocated from above.

<sup>316</sup> *Supplementals.*

Adapted from Cal. Public Resources Code § 21166(c). Source:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prc&group=21001-22000&file=21165-21177>

21166. When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

This language can encompass changes in circumstances or the surrounding environment, because such would constitute new information.

This proposed language introduces the term "adverse" to the criteria, narrowing the focus of a supplemental EIS.

<sup>317</sup> *Supplementals.*

Adapted from Wash. Admin. Code § 197-11-600(4)(d)(ii) and N.Y. Comp. Codes R. & Regs. tit. 6, § 617.9(a)(7)(i)(c). The purpose of the proposed language is to

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provide greater specificity to what type of new information warrants the preparation of a supplemental EIS.

Source: <http://apps.leg.wa.gov/wac/default.aspx?cite=197-11-600>

WAC 197-11-600, When to use existing environmental documents.

- (4) Existing documents may be used for a proposal by employing one or more of the following methods:
- (a) "Adoption," where an agency may use all or part of an existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same proposal for which an environmental document was prepared are not required to adopt the document; or
  - (b) "Incorporation by reference," where an agency preparing an environmental document includes all or part of an existing document by reference.
  - (c) An addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.
  - (d) Preparation of a SEIS if there are:
    - (i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or
    - (ii) New information indicating a proposal's probable significant adverse environmental impacts.
  - (e) If a proposal is substantially similar to one covered in an existing EIS, that EIS may be adopted; additional information may be provided in an addendum or SEIS (see (c) and (d) of this subsection).

## 1           S11-200-27    Determination of Applicability

2           ~~The accepting authority or approving agency, in coordination with~~  
3 ~~the original accepting authority,~~<sup>318</sup> ~~shall be responsible for~~  
4 ~~determining whether a supplemental statement is required. This~~  
5 ~~determination will be submitted to the office for publication in the~~  
6 ~~periodic bulletin. Proposing agencies or applicants shall prepare for~~  
7 ~~public review supplemental statements whenever the proposed action for~~  
8 ~~which a statement was accepted has been modified to the extent that~~  
9 ~~new or different environmental impacts are anticipated.~~<sup>319</sup> A  
10 supplemental statement shall be warranted when the scope of an action  
11 has been substantially increased, when the intensity of environmental  
12 impacts will be increased, when the mitigating measures originally  
13 planned are not to be implemented, or where new circumstances or  
14 evidence have brought to light different or likely increased  
15 environmental impacts not previously dealt with addressed<sup>320</sup>.

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17           The accepting authority or approving agency, in coordination with  
18 the original accepting authority,<sup>321</sup> shall be responsible for  
19 determining whether a supplemental statement is required. This  
20 determination will be submitted to the office for publication in the  
21 periodic bulletin. Proposing agencies or applicants shall prepare for  
22 public review supplemental statements whenever the proposed action for  
23 which a statement was accepted has been modified to the extent that  
24 new or different environmental impacts are anticipated.<sup>322</sup>

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26           [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
27 (Imp: HRS §343-5, 343-6)  
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- <sup>318</sup> *Housekeeping. Previous Council recommendation.*
  - <sup>319</sup> Language moved down to emphasize when it is warranted, then responsibility.
  - <sup>320</sup> *Housekeeping. Previous Council recommendation.*
  - <sup>321</sup> *Housekeeping. Previous Council recommendation.*  
Inserting commas for grammar.
  - <sup>322</sup> *Supplementals.*  
Language moved down to emphasize when it is warranted, then responsibility.

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## 1 §11-200-28 Contents

2 The contents of the supplemental statement ~~shall be the same as~~  
3 ~~required by this chapter for the EIS and need contain only the~~  
4 information necessary to make the EIS adequate for the proposed action  
5 as revised. The supplemental EIS<sup>323</sup> may incorporate by reference  
6 unchanged material from the same; however, in. In addition, ~~it the~~  
7 supplemental statement<sup>324</sup> shall fully document the proposed changes  
8 from the original EIS, including changes in ambient conditions ~~or,~~<sup>325</sup>  
9 newly<sup>326</sup> available information, laws, or policies<sup>327</sup> that ~~have a bearing~~  
10 on a are relevant to a proposed action or its impacts, and the  
11 positive and negative aspects of these changes, and. It shall comply  
12 with the content requirements of ~~section~~ sections 11-200-16 and 11-  
13 200-17<sup>328</sup>, as they relate to the ~~these~~<sup>329</sup> changes.

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15 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6)  
16 (Imp: HRS §343-6)  
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<sup>323</sup> *Supplementals.*

Adapted from Cal. Code Reg., tit 14, § 15163(a)(2)(b). Source:

<http://ceres.ca.gov/ceqa/guidelines/art11.html>

15163. Supplement to an EIR

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

The purpose of this proposed language is to restrict the supplemental EIS to the information necessary to make it adequate based on the change in project or newly discovered adverse information.

<sup>324</sup> *Housekeeping. Previous Council recommendation. Clarify meaning*<sup>325</sup> *Housekeeping. Previous Council recommendation.*<sup>326</sup> *Housekeeping. Supplementals. Previous Council recommendation.*<sup>327</sup> *Housekeeping. Planning. Previous Council recommendation.*<sup>328</sup> *Housekeeping.*

Connects the paragraph to both content requirement sections.

<sup>329</sup> *Housekeeping. Previous Council recommendation.*

1 §11-200-29 Procedures

2 The requirements for the supplemental statement<sup>330</sup> of the thirty-  
3 day consultation, filing public notice, distribution, the forty-five-  
4 day public review, comments and response, and acceptance procedures<sup>331</sup>  
5 shall be the same ~~for the supplemental statement~~ as ~~is~~<sup>332</sup> prescribed by  
6 this chapter for an EIS.

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

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<sup>330</sup> *Supplementals. Previous Council recommendation.*  
Relocated the phrase to the beginning for better grammar and clarity.

<sup>331</sup> *Housekeeping. Previous Council recommendation.*

<sup>332</sup> *Housekeeping. Previous Council recommendation.*

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1           **Subchapter 11 Severability**

2           §11-200-30    Severability

3           If any provision of this chapter or the application thereof to  
4 any person or circumstance is held invalid, the invalidity shall not  
5 affect other provisions or applications of this chapter,<sup>333</sup> which can  
6 be given effect without the invalid provision or application; and to  
7 this end, the provisions of this chapter are declared to be  
8 severable."

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

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13           Amendments to and compilation of chapter 200, title 11, Hawaii  
14 Administrative Rules, and the repeal of section 11-200-11, Hawaii  
15 Administrative Rules were adopted on March 27, 1996 following public  
16 hearings held on November 14, 1995, November 16, 1995, November 17,  
17 1995, November 20, 1995 and November 21, 1995 after public notice was  
18 given in the Honolulu Advertiser, Honolulu Star-Bulletin, Maui News,  
19 The Garden Island, West Hawaii Today, Hawaii Tribune-Herald and  
20 Molokai Dispatch on October 12, 1995.

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<sup>333</sup> *Housekeeping. Previous Council recommendation.*

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## Proposed Subchapters and Sections

### §11-200-A Cultural Impacts<sup>334</sup>

Cultural impacts are of particular concern to the residents of Hawaii and relate to practices and beliefs of particular cultural or ethnic groups. As such, specific rules are provided for the inclusion of cultural impacts in EAs and EISs. In all cases, the analysis of cultural impacts shall be integrated into the main text of the EA or EIS. The level of effort for assessing cultural impacts shall be commensurate to the level of review, proposed action, and potential for significant effect. Cultural impacts are not limited solely to Native Hawaiian culture, though impacts to Native Hawaiian culture are of preeminent concern. In most instances, the scope of cultural impacts is greater than the area over which the proposed action will take place; in such cases, the ahupuaa is an appropriate geographical unit.

A. For EAs, the cultural impact assessment shall contain, but not be limited to, the following information:

1. Consulted individuals and organizations with expertise concerning the types of cultural resources, practices, and beliefs found within the broad geographical area of the proposed location; e.g., the district or ahupuaa;
2. Consulted individuals and organizations with knowledge of the area potentially affected by the proposed action;
3. Research of ethnographic, historical, anthropological, social, or other culturally-related documents, such as mahele or land records;
4. Identification and description of cultural resources, practices, and beliefs located within or associated with the potentially affected area; and
5. An assessment of the impact of the proposed action, alternatives to the proposed action, and any proposed mitigation measures with respect to the identified cultural resources, practices, and beliefs. The assessment should meet the content requirements as set out in HAR §§ 11-200-10 and 16 through 18.

B. For EISs, in addition to the requirements in §11-200-A(A), the assessment should address, but not necessarily be limited to, the following information:

1. A discussion of the methods applied and results of consultation with individuals and organizations, such as community groups; cultural experts who demonstrate substantial knowledge, experience, or expertise in a cultural practice<sup>335</sup>; and cultural practitioners<sup>336</sup>;

- 1 identified by the preparer as being familiar with  
2 cultural practices and features associated with the  
3 proposed location, including any constraints or  
4 limitations which might have affected the quality of the  
5 information obtained;
- 6 2. A description of methods adopted by the preparer to  
7 identify, locate, and select the persons interviewed,  
8 including a discussion of the level of effort  
9 undertaken;
- 10 3. Ethnographic and oral history procedures, including the  
11 circumstances under which the interviews were conducted,  
12 and any constraints or limitations which might have  
13 affected the quality of the information obtained;
- 14 4. Biographical information concerning the individuals and  
15 organizations consulted, their particular expertise, and  
16 their historical and genealogical relationship to the  
17 proposed location, as well as information concerning the  
18 persons submitting information or interviewed, their  
19 particular knowledge and cultural expertise, if any, and  
20 their historical and genealogical relationship to the  
21 proposed location;
- 22 5. A discussion concerning historical and cultural source  
23 materials consulted, the institutions and repositories  
24 searched, and the level of effort undertaken. This  
25 discussion should include, if appropriate, the  
26 particular perspective of the authors, any opposing  
27 views, and any other relevant constraints, limitations,  
28 or biases;
- 29 6. A discussion concerning the cultural resources,  
30 practices, and beliefs identified, and, for resources  
31 and practices, their location within the broad  
32 geographical area in which the proposed action is  
33 located, as well as their direct or indirect  
34 significance or connection to the project site;
- 35 7. A discussion concerning the nature of the cultural  
36 practices and beliefs, and the significance of the  
37 cultural resources within the project area, affected  
38 directly or indirectly by the proposed action;
- 39 8. An explanation of confidential information that has been  
40 withheld from public disclosure in the assessment;
- 41 9. A discussion concerning any conflicting information in  
42 regard to identified cultural resources, practices, and  
43 beliefs;
- 44 10. An analysis of the potential effect of any proposed  
45 physical alteration on cultural resources, practices, or

1 beliefs; the potential of the proposed action to isolate  
2 cultural resources, practices, or beliefs from their  
3 setting; and the potential of the proposed action to  
4 introduce elements which may alter the setting in which  
5 cultural practices occur; and

- 6 11. A bibliography of references, and attached records of  
7 interviews which were allowed to be disclosed.  
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<sup>334</sup> *Cultural Impacts.*

There is a growing desire amongst the public and EIS practitioners for greater clarity on how to incorporate cultural impacts into the EIS process. The Environmental Council published guidance on this in 1997 following the promulgation of HAR 11-200 in 1996. The language here is almost verbatim from the guidance. The Rules Committee seeks feedback on developing this guidance into rules. Of particular concern is the absence of consensus on methodology, validating impacts, and significance determinations.

Separated into requirements for an EA and an EIS.

<sup>335</sup> *Cultural Impacts.*

OHA defines a "cultural expert" as a person who demonstrates substantial knowledge, experience, or expertise in a cultural practice.

<sup>336</sup> *Cultural Impacts.*

OHA defines a "cultural practitioner" as a person who engages in a cultural practice.