

Amendment

Amendment to Chapter 11-200
Hawaii Administrative Rules

DEC 5 2007

SUMMARY

1. §11-200-8 is amended.

§11-200-8 Exempt classes of action. (a)
Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
- (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
- (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:
 - (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
 - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with

- the building of two or more such structures;
- (C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
 - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;
- (4) Minor alterations in the conditions of land, water, or vegetation;
 - (5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;
 - (6) Construction or placement of minor structures accessory to existing facilities;
 - (7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
 - (8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;
 - (9) Zoning variances except shoreline set-back variances; [and]

- (10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions; and
- (11) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond that previously existing, and for which the legislature has appropriated or otherwise authorized funding.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS,

and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter. [Eff 12/6/85; am and comp 8/31/96; am DEC 17 2007] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

DEPARTMENT OF HEALTH

Amendment to chapters 11-200, Hawaii Administrative Rules, on the Summary page dated ~~DEC 5 2007~~ ~~DEC 5 2007~~, were adopted on ~~DEC 5 2007~~ following a public hearing held on November 26, 2007, after public notice was given in the Hawaii Tribune Herald, West Hawaii Today, The Maui News, The Molokai Dispatch, the Honolulu Advertiser, the Honolulu Star Bulletin, and the Garden Island News, October 26, 2007.

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.



CHIYOME L. FUKINO, M.D.
Director of Health

APPROVED AS TO FORM:



EDWARD. G. BOHLEN
Deputy Attorney General



LINDA LINGLE
Governor
State of Hawaii

Date: DEC - 6 2007

Filed

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-200
Hawaii Administrative Rules
June 26, 1996

SUMMARY

1. §§11-200-1 to 11-200-6 are amended.
2. §§11-200-8 to 11-200-9 are amended.
3. A new §11-200-9.1 is added.
4. §11-200-10 is amended.
5. §11-200-11 is repealed.
6. New §§11-200-11.1 and 11-200-11.2 are added.
7. §§11-200-12 to 11-200-29 are amended.
8. Chapter 200 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 200

ENVIRONMENTAL IMPACT STATEMENT RULES

Subchapter 1 Purpose

§11-200-1 Purpose

Subchapter 2 Definitions and Terminology

§11-200-2 Definitions and Terminology

Subchapter 3 Periodic Bulletin

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§11-200-5 Agency actions

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§11-200-10 Contents of an environmental assessment

§11-200-11 REPEALED

- §11-200-11.1 Notice of determination for draft environmental assessments
- §11-200-11.2 Notice of determination for final environmental assessments
- §11-200-12 Significance criteria
- §11-200-13 Consideration of previous determinations and accepted statements

Subchapter 7 Preparation of Draft and Final Environmental Impact Statements

- §11-200-14 General provisions
- §11-200-15 Consultation prior to filing a draft environmental impact statement
- §11-200-16 Content requirements
- §11-200-17 Content requirements; draft environmental impact statement
- §11-200-18 Content requirements; final environmental impact statement
- §11-200-19 Environmental impact statement style
- §11-200-20 Filing of an environmental impact statement
- §11-200-21 Distribution
- §11-200-22 Public review of environmental impact statements and addenda to draft environmental impact statements
- §11-200-23 Acceptability

Subchapter 8 Appeals

- §11-200-24 Appeals to the council

Subchapter 9 National Environmental Policy Act

- §11-200-25 National Environmental Policy Act actions: applicability to chapter 343, HRS

Subchapter 10 Supplemental Statements

- §11-200-26 General provisions
- §11-200-27 Determination of applicability
- §11-200-28 Contents
- §11-200-29 Procedures

Subchapter 11 Severability

- §11-200-30 Severability

Historical Note: Chapter 11-200, Hawaii Administrative Rules, is based substantially on the Environmental Impact Statement Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]

SUBCHAPTER 1

PURPOSE

§11-200-1 Purpose. Chapter 343, HRS, establishes a system of environmental review at the state and county levels which shall ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications of contents of environmental assessments and environmental impact statements, and criteria and definitions of statewide application. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

SUBCHAPTER 2

DEFINITIONS AND TERMINOLOGY

§11-200-2 Definitions and terminology. As used in this chapter:

"Acceptance" means a formal determination of acceptability that the document required to be filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. 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 or agency that determines the acceptability of the EIS document.

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

"Addendum" means an attachment to a draft environmental assessment or draft environmental impact statement, 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 already filed with the office.

"Agency" means any department, office, board, or commission of the state or county government which 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 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.

"Approving agency" means an agency that issues an approval prior to actual implementation of an action.

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

"Cumulative impact" means 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 or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Draft environmental assessment" means the environmental assessment submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a negative declaration determination.

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects

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(such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative. Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

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

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

"Environmental assessment" means a written evaluation to determine whether an action may have a significant environmental effect.

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

"Environmental impact statement", "statement", or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and this chapter and which fully complies with subchapter 7 of this chapter. The initial statement filed for public review shall be referred to as the draft environmental impact statement and shall be distinguished from the final environmental impact statement which is the document that has incorporated the public's comments and the responses to those comments. The final environmental impact statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to prepare environmental assessments, for a class of actions, based on a determination by the proposing agency or approving agency that the class of actions will probably have a minimal or no significant effect on the environment.

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"Exemption notice" means a brief notice kept on file by the proposing agency, in the case of a public action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project.

"Final environmental assessment" means either the environmental assessment submitted by a proposing agency or an approving agency following the public review and comment period for the draft environmental assessment and in support of either a negative declaration or a preparation notice determination; or the environmental assessment submitted by a proposing agency or an approving agency subject to a public consultation period when such an agency clearly determines at the outset that the proposed action may have a significant effect and hence will require the preparation of a statement.

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

"National Environmental Policy Act" means the National Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. §§4321-4347, as amended.

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

"Office" means the office of environmental quality control.

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

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

"Preparation notice" or "EIS preparation notice" means a determination based on an environmental assessment that the subject action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement.

"Primary impact" or "primary effect" or "direct impact" or "direct effect" means effects which are

caused by the action and occur at the same time and place.

"Secondary impact" or "secondary effect" or "indirect impact" or "indirect effect" means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the state's environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic or social welfare, or are otherwise set forth in section 11-200-12 of this chapter.

"Supplemental statement" means an additional environmental impact statement prepared for an action for which a statement was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things. [Eff 12/6/85; am and comp AUG 31 1996]
(Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

SUBCHAPTER 3

PERIODIC BULLETIN

§11-200-3 Periodic bulletin. (a) The office shall inform the public through the publication of a periodic bulletin of the following:

- (1) Notices filed by agencies of the availability of environmental assessments and appropriate addendum documents for review and comments;
- (2) Notices filed by agencies of determinations that statements are required or not required;
- (3) The availability of statements, supplemental statements and appropriate addendum documents for review and comments;
- (4) The acceptance or non-acceptance of statements; and

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(5) Other notices required by the rules of the council.

(b) The bulletin shall be made available to any person upon request. Copies of the bulletin shall also be sent to the state library system and other depositories or clearinghouses.

(c) The bulletin shall be issued on the eighth and twenty-third days of each month. All agencies and applicants submitting draft environmental assessments, negative declarations, preparation notices, environmental impact statements, acceptance or nonacceptance determinations, addenda, supplemental statements, supplemental preparation notices, revised documents, withdrawals, and other notices required to be published in the bulletin shall submit such documents or notices to the office before the close of business eight working days prior to the issue date. In case the deadline falls on a state holiday or nonworking day, the deadline shall be the next working day.

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

(e) The office may provide recommendations to the agency responsible for the environmental assessment or EIS regarding any applicable administrative content requirements set forth in this chapter.

(f) The office may, on a space available basis, publish other notices not specifically related to chapter 343, HRS. [Eff 12/6/85; am and

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comp AUG 31 1996] (Auth: HRS §§341-3, 343-5,
343-6) (Imp: HRS §§341-3, 343-3, 343-6)

SUBCHAPTER 4

RESPONSIBILITIES

§11-200-4 Identification of accepting authority.

(a) Whenever an agency proposes an action, the final authority to accept a statement shall rest with:

- (1) The governor, or an authorized representative, whenever an action proposes the use of state lands or the use of state funds or, whenever a state agency proposes an action within section 11-200-6(b); or
- (2) The mayor, or an authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

(b) Whenever an applicant proposes an action, the authority for requiring statements and for accepting any required statements that have been prepared shall rest with the agency initially receiving and agreeing to process the request for an approval. In the event that there is more than one agency that has jurisdiction over the action, and these agencies are unable to agree as to which agency has the responsibility for complying with section 343-5(c), HRS, the office, after consultation with the agencies involved, shall determine which agency is responsible. In making the determination, the office shall take into consideration, including, but not limited to, the following factors:

- (1) The agency with the greatest responsibility for supervising or approving the action as a whole;
- (2) The agency that can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;
- (3) The agency that has special expertise or access to information; and
- (4) The extent of participation of each agency in the action. [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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SUBCHAPTER 5

APPLICABILITY

§11-200-5 Agency actions. (a) For all proposed actions which are not exempt as defined in section 11-200-8, the agency shall assess at the earliest practicable time the significance of potential impacts of its actions, including the overall, cumulative impact in light of related actions in the region and further actions contemplated.

(b) The applicability of chapter 343, HRS, to specific agency proposed actions is conditioned by the agency's proposed use of state or county lands or funds. Therefore, when an agency proposes to implement an action to use state or county lands or funds, it shall be subject to the provisions of chapter 343, HRS, and this chapter.

(c) Use of state or county funds shall include any form of funding assistance flowing from the State or county, and use of state or county lands includes any use (title, lease, permit, easement, licenses, etc.) or entitlement to those lands.

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

(e) Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation requires an environmental assessment. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the

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comprehensive review process are not excepted.)
[Eff 12/6/85; am and comp AUG 31 1996] (Auth:
HRS §§343-5, 343-6) (Imp: HRS §§343-5(b), 343-6)

§11-200-6 Applicant actions. (a) Chapter 343, HRS, shall apply to persons who are required to obtain an agency approval prior to proceeding with:

- (1) Implementing actions which are either located in certain specified areas; or
- (2) Actions that require certain types of amendments to existing county general plans.

(b) Chapter 343, HRS, establishes certain categories of action which require the agency processing an applicant's request for approval to prepare an environmental assessment. There are seven geographical categories and two administrative categories.

- (1) The seven geographical categories are:
 - (A) The use of state or county lands;
 - (B) Any use within any land classified as conservation district by the state land use commission under chapter 205, HRS;
 - (C) Any use within the shoreline area as defined in section 205A-41, HRS;
 - (D) Any use within any historic site as designated in the national register or Hawaii register;
 - (E) Any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
 - (F) Any reclassification of any land classified as conservation district by the state land use commission under chapter 205, HRS; and
 - (G) The construction of new, or the expansion or modification of existing helicopter facilities within the State which by way of their activities may affect any land classified as conservation district by the state land use commission under chapter 205, HRS; the shoreline area as defined in section 205A-41, HRS; or, any historic site as designated in the National

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Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 98-665, or chapter 6E, HRS; or, until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.

- (2) The two administrative categories are:
- (A) Any amendment to existing county general plans, however denominated, which may include but not be limited to development plans, or community plans, where the amendment would result in designations other than agriculture, conservation, or preservation. (Actions by a county initiating a comprehensive review toward effectuating either a general plan or amendment thereof may be excepted. General plan amendments requested by a private owner or developer outside of the comprehensive review process are not excepted.); and
 - (B) The use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.
- [Eff 12/6/85; am and
comp AUG 31 1996] (Auth:
HRS §§343-5, 343-6) (Imp: HRS §§343-5,
343-6)

§11-200-7 Multiple or phased applicant or agency actions. A group of actions proposed by an agency or an applicant shall be treated as a single action when:

- (1) The component actions are phases or increments of a larger total undertaking;

- (2) An individual project is a necessary precedent for a larger project;
- (3) An individual project represents a commitment to a larger project; or
- (4) The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole. [Eff 12/6/85; comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-8 Exempt classes of action. (a)
Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;
- (2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;
- (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

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- (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;
 - (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
 - (C) Stores, offices, and restaurants designed for total occupant load of twenty persons or less per structure, if not in conjunction with the building of two or more such structures; and
 - (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;
- (4) Minor alterations in the conditions of land, water, or vegetation;
 - (5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;
 - (6) Construction or placement of minor structures accessory to existing facilities;
 - (7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;
 - (8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as amended, or chapter 6E, HRS;
 - (9) Zoning variances except shoreline set-back variances; and
 - (10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.
- (b) All exemptions under the classes in this section are inapplicable when the cumulative impact of

See the 2007 amendment for a new 11th Exempt Class of Action.

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planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, environmental council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in chapter 343, HRS, and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

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

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- other agencies having jurisdiction or expertise as well as those citizen groups and individuals which the proposing agency reasonably believes to be affected;
- (2) Identify the accepting authority pursuant to section 11-200-4 and specify what statutory conditions under section 343-5(a), HRS, 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 potential impacts, evaluate the potential significance of each impact, and provide 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 or an environmental impact statement preparation notice, provided that for an environmental impact statement preparation notice, the proposing agency shall inform the accepting authority of the proposed action;
 - (5) File the appropriate notice of determination (anticipated negative declaration or environmental impact statement preparation notice in accordance with section 11-200-11.1 or 11-200-11.2, as appropriate), the completed informational form in section 11-200-3(d), and four copies of the supporting environmental assessment (a draft environmental assessment for the anticipated negative declaration or a final environmental assessment for the environmental impact statement preparation notice) 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;
 - (6) Distribute, concurrently with the filing in paragraph (5), the draft environmental assessment to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the proposing

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- (7) agency reasonably believes to be affected; Deposit, concurrently with the filing in paragraph (5), one copy of the draft environmental assessment at the nearest state library in each county in which the proposed action is to occur;
 - (8) Receive and respond to public comments in accordance with: section 11-200-9.1 for draft environmental assessments for anticipated negative declaration determinations; or, section 11-200-15 for environmental assessments for preparation notices. For draft environmental assessments, the proposing agency shall revise the environmental assessment to incorporate public comments as appropriate, and append copies of comment letters and responses in the environmental assessment (the draft environmental assessment as revised, shall be filed as a final environmental assessment as described in section 11-200-11.2); and
 - (9) As appropriate, issue either a negative declaration determination or an environmental impact statement preparation notice pursuant to the requirements of section 11-200-11.2, provided that for preparation notice determinations, the proposing agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.
- (b) For applicant actions, except those actions exempt from the preparation of an environmental assessment pursuant to section 343-5, HRS, or those actions which the approving agency declares exempt pursuant to section 11-200-8, the approving agency shall:
- (1) Require the applicant, at the earliest practicable time, to seek the advice and input of the lead 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

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- the approving agency reasonably believes to be affected;
- (2) Require the applicant to provide whatever information the approving agency deems necessary to complete the preparation of an environmental assessment in accordance with section 11-200-10;
 - (3) Within thirty days from the date of receipt of the applicant's complete request for approval to the approving agency:
 - (A) prepare an environmental assessment pursuant to section 11-200-10; and
 - (B) determine, after reviewing the environmental assessment and considering the significance criteria in section 11-200-12 whether the proposed action warrants an anticipated negative declaration or an environmental impact statement preparation notice;
 - (4) File the appropriate notice of determination (anticipated negative declaration or environmental impact statement preparation notice in accordance with section 11-200-11.1 or 11-200-11.2), the completed informational form in section 11-200-3(d) and four copies of the supporting environmental assessment (a draft environmental assessment for the anticipated negative declaration or a final environmental assessment for the environmental impact statement preparation notice) with the office in accordance with sections 11-200-3, and 11-200-11.1, or 11-200-11.2;
 - (5) Distribute, or require the applicant to distribute, concurrently with the filing in paragraph (4), the draft environmental assessment to other agencies having jurisdiction or expertise as well as citizen groups and individuals which the approving agency reasonably believes to be affected;
 - (6) Deposit or require the applicant to deposit, concurrently with the filing in paragraph (4), one copy of the draft environmental assessment at the nearest state library in each county in which the proposed action is to occur;

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- (7) Receive public comments, transmit copies of public comments to the applicant and require the applicant to respond to public comments, all in accordance with section 11-200-9.1 for draft environmental assessments, or 11-200-15 for preparation notices and their associated final environmental assessments. For draft environmental assessments, the approving agency shall require the applicant: to provide whatever information the approving agency deems necessary to revise the draft environmental assessment; to incorporate comments as appropriate; and, to include copies of comment letters and the applicant responses (the draft environmental assessment as revised shall be filed as a final environmental assessment as described in section 11-200-11.2); and
- (8) As appropriate, issue a negative declaration determination or an environmental impact statement preparation notice with appropriate notice of determination thereof pursuant to section 11-200-11.2 within thirty days from the end of the thirty-day public comment period. For preparation notice determinations, the approving agency shall proceed to section 11-200-15 after fulfilling the requirements of sections 11-200-10, 11-200-11.2, 11-200-13, and 11-200-14, as appropriate.

(c) For agency or applicant actions, the proposing agency or the approving agency, as appropriate, shall analyze alternatives, in addition to the proposed action in the environmental assessment.
[Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-9.1 Public review and response requirements for draft environmental assessments for anticipated negative declaration determinations and addenda to draft environmental assessments. (a) This section shall apply only if a proposing agency or an approving agency anticipates a negative declaration determination for a proposed action and that agency has completed the requirements of section 11-200-9(a), paragraphs (1), (2), (3), (4), (5), (6) and (7), or

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section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6), as appropriate.

(b) The period for public review and for submitting written comments for both agency actions and applicant actions shall begin as of the initial issue date that notice of availability of the draft environmental assessment was published in the periodic bulletin and shall continue for a period of thirty days. Written comments to the proposing agency or approving agency, whichever is applicable, with a copy of the comments to the applicant or proposing agency, shall be received or postmarked to the proposing agency or approving agency, within the thirty-day period. Any comments outside of the thirty-day period need not be considered or responded to.

(c) For agency actions, the proposing agency shall respond in writing to all comments received or postmarked during the thirty-day review period, incorporate comments as appropriate, and append the comments and responses in the final environmental assessment. Each response shall be sent directly to the person commenting, with copies of the response also sent to the office.

(d) For applicant actions, the applicant shall respond in writing to all comments received or postmarked during the thirty-day review period and the approving agency shall incorporate or append the comments and responses in the final environmental assessment. Each response shall be sent directly to the person commenting with a copy to the office. A copy of each response shall be sent to the approving agency for its timely preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and 11-200-11.1 or 11-200-11.2.

(e) An addendum document to a draft environmental assessment shall reference the original draft environmental assessment it attaches to and shall comply with all applicable public review and comment requirements set forth in sections 11-200-3 and 11-200-9. [Eff and comp AUG 31 1996](Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

§11-200-10 Contents of an environmental assessment. The proposing agency or approving agency shall prepare any draft or final environmental assessment of each proposed action and determine

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whether the anticipated effects constitute a significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental assessment shall contain, but not be limited to, the following information:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies, citizen groups, and individuals consulted in making the assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps;
- (6) Identification and summary of impacts and alternatives considered;
- (7) Proposed mitigation measures;
- (8) Agency determination or, for draft environmental assessments only, an anticipated determination;
- (9) Findings and reasons supporting the agency determination or anticipated determination;
- (10) Agencies to be consulted in the preparation of the EIS, if an EIS is to be prepared;
- (11) List of all permits and approvals (State, federal, county) required; and
- (12) Written comments and responses to the comments under the early consultation provisions of sections 11-200-9(a)(1), 11-200-9(b)(1), or 11-200-15, and statutorily prescribed public review periods. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5(c), 343-6)

§11-200-11 REPEALED. [R AUG 31 1996]

§11-200-11.1 Notice of determination for draft environmental assessments. (a) After preparing an

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environmental assessment and reviewing public and agency comments, if any, applying the significance criteria in section 11-200-12, if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be an anticipated negative declaration subject to the public review provisions of section 11-200-9.1. The proposing agency or approving agency shall also file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9, and the requirements in subsection (c) along with four copies of the supporting environmental assessment. In addition to the above, the anticipated negative declaration determination for any applicant action shall be mailed to the requesting applicant by the approving agency.

(b) The office shall publish notice of availability of the draft environmental assessment for the anticipated negative declaration in the periodic bulletin following the date of receipt by the office in accordance with section 11-200-3.

(c) The notice of determination shall indicate in a concise manner:

- (1) Identification of applicant or proposing agency;
- (2) Identification of accepting authority;
- (3) Brief description of proposed action;
- (4) Determination;
- (5) Reasons supporting determination; and
- (6) Name, address, and phone number of contact person for further information.

(d) When an agency withdraws a determination pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency withdrawals in accordance with section 11-200-3.

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

§11-200-11.2 Notice of determination for final environmental assessments. (a) After preparing a final environmental assessment, reviewing public and agency comments, if any, applying the significance criteria in section 11-200-12, the proposing agency or the approving agency shall issue one of the following

notices of determination in accordance with section 11-200-9(a) or 11-200-9(b), and file the notice with the office addressing the requirements in subsection (c), along with four copies of the supporting final environmental assessment, provided that in addition to the above, all notices of determination for any applicant action shall be mailed to the requesting applicant by the approving agency:

- (1) Environmental impact statement preparation notice. If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue a notice of determination which shall be an environmental impact statement preparation notice and such notice shall be filed as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.
- (2) Negative declaration. If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of determination which shall be a negative declaration, and the proposing agency or approving agency shall file such notice with the office as early as possible after the determination is made pursuant to and in accordance with section 11-200-9.
- (b) The office shall publish the appropriate notice of determination in the periodic bulletin following receipt of the documents in subsection (a) by the office in accordance with section 11-200-3.
- (c) The notice of determination shall indicate in a concise manner:
 - (1) Identification of applicant or proposing agency;
 - (2) Identification of accepting authority;
 - (3) Brief description of proposed action;
 - (4) Determination;
 - (5) Reasons supporting determination; and
 - (6) Name, address, and phone number of contact person for further information.
- (d) When an agency withdraws a determination pursuant to its rules, the agency shall submit to the office a written letter informing the office of its withdrawal. The office shall publish notice of agency

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withdrawals in accordance with section 11-200-3. [Eff
and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6)
(Imp: HRS §§ 343-5(c), 343-6)

§11-200-12 Significance criteria. (a) In considering the significance of potential environmental effects, agencies shall consider the sum of effects on the quality of the environment, and shall evaluate the overall and cumulative effects of an action.

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

- (1) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
- (2) Curtails the range of beneficial uses of the environment;
- (3) Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
- (4) Substantially affects the economic or social welfare of the community or State;
- (5) Substantially affects public health;
- (6) Involves substantial secondary impacts, such as population changes or effects on public facilities;
- (7) Involves a substantial degradation of environmental quality;
- (8) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- (9) Substantially affects a rare, threatened, or endangered species, or its habitat;
- (10) Detrimentally affects air or water quality or ambient noise levels;
- (11) Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone,

- beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
- (12) Substantially affects scenic vistas and viewplanes identified in county or state plans or studies; or,
- (13) Requires substantial energy consumption.
[Eff 12/6/85; am and comp AUG 31 1996]
(Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

§11-200-13 Consideration of previous determinations and accepted statements. (a) Chapter 343, HRS, provides that whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, when applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required, and previously accepted statements.

(b) Previous determinations and previously accepted statements may be incorporated by applicants and agencies whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.

(c) Agencies shall not, without considerable pre-examination and comparison, use past determinations and previous statements to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted statements. Further, when previous determinations and previous statements are considered or incorporated by reference, they shall be substantially similar to and relevant to the action then being considered. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 7

PREPARATION OF DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS

§11-200-14 General provisions. Chapter 343, HRS, directs that in both agency and applicant actions where statements are required, the preparing party shall

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prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-15 Consultation prior to filing a draft environmental impact statement. (a) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10) and other citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS prior to the time the EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth the scope of the draft EIS may be held within the thirty-day public review and comment period in subsection (b), provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).

(b) Upon publication of a preparation notice in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty days.

(c) Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.

(d) Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-16 Content requirements. The environmental impact statement shall contain an explanation of the environmental consequences of the proposed action. The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the agency can make a sound decision based upon the full range of responsible opinion on environmental effects, a statement shall include responsible opposing views, if any, on significant environmental issues raised by the proposal. [Eff

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

§11-200-17 Content requirements; draft environmental impact statement. (a) The draft EIS, at a minimum, shall contain the information required in this section.

(b) The draft EIS shall contain a summary sheet which concisely discusses the following:

- (1) Brief description of the action;
- (2) Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);
- (3) Proposed mitigation measures;
- (4) Alternatives considered;
- (5) Unresolved issues; and
- (6) Compatibility with land use plans and policies, and listing of permits or approvals.

(c) The draft EIS shall contain a table of contents.

(d) The draft EIS shall contain a separate and distinct section that includes a statement of purpose and need for the proposed action.

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

- (1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a related regional map;
- (2) Statement of objectives;
- (3) General description of the action's technical, economic, social, and environmental characteristics;
- (4) Use of public funds or lands for the action;
- (5) Phasing and timing of action;
- (6) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and
- (7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section alternatives which could attain

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the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:

- (1) The alternative of no action;
- (2) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;
- (3) Alternatives related to different designs or details of the proposed actions which would present different environmental impacts;
- (4) The alternative of postponing action pending further study; and,
- (5) Alternative locations for the proposed project.

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

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population

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and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted.

(h) The draft EIS shall include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

(i) The draft EIS shall include a statement of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment; direct and indirect effects shall be included. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to

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land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

(j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

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

(l) The draft EIS shall address all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that

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found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, HRS, shall be included, including those effects discussed in other actions of this paragraph which are adverse and unavoidable under the proposed action. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

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

(n) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problems.

(o) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing

the statement, by contract or other authorization, shall be disclosed.

(p) The draft EIS shall include a separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200-18 Content requirements; final environmental impact statement. The final EIS shall consist of:

- (1) The draft EIS revised to incorporate substantive comments received during the consultation and review processes;
- (2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;
- (3) A list of persons, organizations, and public agencies commenting on the draft EIS;
- (4) The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation processes.
- (5) The text of the final EIS which shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft EIS. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200-19 Environmental impact statement style. In developing the EIS, preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement. The scope of the statement may vary with the scope of the proposed action and its impact. Data and analyses in a statement shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply

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referenced. Statements shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including cost benefit analyses and reports required under other legal authorities. Care shall be taken to concentrate on important issues and to ensure that the statement remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200-20 Filing of an environmental impact statement. (a) The proposing agency or applicant shall file the original (signed) draft EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, a minimum number of four copies of the draft EIS shall be filed with the office.

(b) The proposing agency or applicant shall file the original (signed) final EIS with the accepting authority, along with a minimum number of copies determined by the accepting authority. Simultaneously, four copies of the final EIS shall be filed with the office.

(c) An EIS may be filed at any time at the office by the proposing agency or applicant in accordance with section 11-200-3.

(d) The proposing agency or applicant shall sign and date the original copy of the draft or final EIS and shall indicate that the statement and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, as appropriate. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-3, 343-6)

§11-200-21 Distribution. The office shall be responsible for the publication of the notice of availability of the EIS in its bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public depositories, which shall include public

libraries, where copies of the statements shall be available, and to the extent possible, the proposing agency or applicant shall make copies of the EIS available to individuals requesting the EIS. The office's distribution list may be developed cooperatively among the applicant or proposing agency, the accepting authority, and the office; provided the office shall be responsible for determining the final list. The applicant or proposing agency shall directly distribute the required copies to those on the distribution list after the office has verified to the applicant or proposing agency the accuracy of the distribution list. For final statements, the agency or applicant shall give the commentor an option of requesting a copy of the final EIS or portions thereof. [Eff 12/6/85; am and comp AUG 31 1996]
(Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

§11-200-22 Public review of environmental impact statements and addenda to draft environmental impact statements. (a) Public review shall not substitute for early and open discussion with interested persons and agencies, concerning the environmental impacts of a proposed action. Review of the 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 the date 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, shall be received or postmarked to the approving agency or accepting authority, within said forty-five-day period. Any comments outside of the forty-five day comment period need not be considered or responded to.

(c) The proposing agency or applicant shall respond in writing to the comments received or postmarked during the forty-five-day review period and incorporate the comments and responses in the final EIS. The response to comments shall include:

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- (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.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final EIS shall indicate verbatim changes that have been made to the text of the draft EIS. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the applicant's or proposing agency's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(d) An addendum document to a draft environmental impact statement shall reference the original draft environmental impact statement it attaches to and comply with all applicable filing, public review, and comment requirements set forth in subchapter 7.
[Eff 12/6/85; am and comp AUG 31 1996] (Auth:
HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-23 Acceptability. (a) Acceptability of a statement shall be evaluated on the basis of whether the statement, in its completed form, represents an informational instrument which fulfills the definition of an EIS and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

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

- (1) The procedures for assessment, consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this chapter;
- (2) The content requirements described in this chapter have been satisfied; and

(3) Comments submitted during the review process have received responses satisfactory to the accepting authority, or approving agency, and have been incorporated in the statement.

(c) For actions proposed by agencies, the proposing agency may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. In all cases involving state funds or lands, the governor or an authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or an authorized representative shall have final authority to accept the EIS. The accepting authority shall take prompt measures to determine the acceptability or nonacceptability of the proposing agency's statement. In the event that the action involves both state and county lands or funds, the governor or an authorized representative shall have final authority to accept the EIS. Upon acceptance or non-acceptance of the EIS, a notice shall be filed by the appropriate accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with section 11-200-3. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

(d) For actions proposed by applicants requiring approval from an agency, the applicant or accepting authority may request the office to make a recommendation regarding the acceptability or non-acceptability of the statement. If the office decides to make a recommendation, it shall submit the recommendation to the applicant and the approving agency within the thirty-day period requiring an approving agency to determine the acceptability of the final EIS and described in section 343-5(c), HRS. Upon acceptance or non-acceptance by the approving agency, the agency shall notify the applicant of its determination, and provide specific findings and reasons. The agency shall also provide a copy of this determination to the office for publication of a notice in the periodic bulletin. Acceptance of the

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required EIS shall be a condition precedent to approval of the request and commencement of the proposed action. An approving agency shall take prompt measures to determine the acceptability or non-acceptability of the applicant's statement. The agency shall notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS, provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days. The request shall be made to the accepting authority in writing. Upon receipt of an applicant's request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be allowed merely for the convenience of the accepting authority. In the event that the agency fails to make a determination of acceptance or non-acceptance for the statement within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

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

(f) A proposing agency or applicant may withdraw an EIS by sending a letter to the office informing the office of the agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a new EIS.
[Eff 12/6/85; am and comp AUG 31 1996] (Auth:
HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 8

APPEALS

§11-200-24 Appeals to the council. An applicant, within sixty days after non-acceptance of a statement by an agency, may appeal the non-acceptance to the council, which within thirty days of receipt of the appeal, shall notify the applicant of its determination. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the agency with specific findings and reasons for its determination. The agency shall abide by the council's decision. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 9

NATIONAL ENVIRONMENTAL POLICY ACT

§11-200-25 National Environmental Policy Act actions: applicability to chapter 343, HRS. When the situation occurs where 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:

- (1) The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the National Environmental Policy Act, 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.
- (2) The National Environmental Policy Act requires that draft statements be prepared by the responsible federal agency. When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the National Environmental Policy Act. The office and agencies shall cooperate with federal agencies to the

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- fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.
- (3) In all actions where the use of state land or funds is proposed, the final statement shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed, the final statement shall be submitted to the mayor, or an authorized representative. The final statement in these instances shall first be accepted by the governor or mayor (or an authorized representative), prior to the submission of the same to the Environmental Protection Agency or responsible federal agency.
- (4) Any acceptance obtained pursuant to paragraphs (1) to (3) shall satisfy chapter 343, HRS, and no other statement for the proposed action shall be required. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 10

SUPPLEMENTAL STATEMENTS

§11-200-26 General provisions. 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 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. 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. 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)

§11-200-27 Determination of applicability. The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with. [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200-28 Contents. The contents of the supplemental statement shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of section 11-200-16 as

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they relate to the changes. [Eff 12/6/85; am and comp
AUG 3 1 1996] (Auth: HRS §§343-5, 343-6) (Imp: HRS
§343-6)

§11-200-29 Procedures. The requirements of the
thirty-day consultation, filing public notice,
distribution, the forty-five-day public review,
comments and response, and acceptance procedures, shall
be the same for the supplemental statement as is
prescribed by this chapter for an EIS. [Eff 12/6/85;
am and comp AUG 3 1 1996] (Auth: HRS §§343-5,
343-6) (Imp: HRS §343-6)

SUBCHAPTER 11

SEVERABILITY

§11-200-30 Severability. If any provision of
this chapter or the application thereof to any person
or circumstance is held invalid, the invalidity shall
not affect other provisions or applications of this
chapter which can be given effect without the invalid
provision or application; and to this end, the
provisions of this chapter are declared to be
severable." [Eff 12/6/85; comp AUG 3 1 1996]
(Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-6, 343-8)

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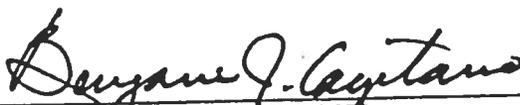
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Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the repeal of section 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996 following public hearings held on November 14, 1995, November 16, 1995,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

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.


KENNETH K. FUKUNAGA
Chairperson
Environmental Council

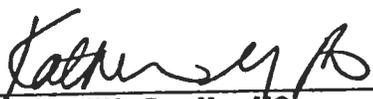

LAWRENCE MIIKE, M.D.
Director
Department of Health


BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: 8/20/96

Filed

APPROVED AS TO FORM:


KATHLEEN S. Y. HO
Deputy Attorney General

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