



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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David Y. Ige  
Governor

Chairperson  
Joseph Shacat

Vice Chair  
Puananionaona Thoene

Members  
Roy Abe  
Mary Begier  
Stephanie Dunbar-Co  
Scott Glenn (*Ex Officio*)  
Maka'ala Ka'umoana  
P. Ka'anohi Kaleikini  
I. Robin Kaye  
Theresita Kinnaman  
Robert Parsons  
Charles Prentiss  
Ron Terry  
Michael Tulang  
N. Mahina Tuteur

Environmental Council

Meeting Minutes

Tuesday, March 6, 2018, 9:00 AM - 4:30 PM

Leiopapa A Kamehameha Bldg.

Room 204, 235 S. Beretania St, Honolulu, Hawai'i 96813

## Members Present:

Roy Abe, Mary Begier, Stephanie Dunbar-Co, Scott Glenn, Maka'ala Ka'umoana, Robin Kaye, Theresita Kinnaman, Robert Parsons, Charles Prentiss, Joseph Shacat, Ronald Terry, Puananionaona Thoene, Michael Tulang, Mahina Tuteur

## Members Absent:

P. Ka'anohi Kaleikini

## Environmental Council Counsel

Edward Bohlen

## Office of Environmental Quality Control (OEQC) Staff:

Leslie Segundo

## Public:

Laura McIntyre, Denise Antolini (University of Hawai'i William S. Richardson School of Law), John Robert (Watanabe Ing), Joelle Simonpietri, Jennifer Lim (Carlsmith Ball), Mark Fox (The Nature Conservancy), Sara Bolduc

Note: **Bolded** items indicate text from the agenda.

## 1. Call to order, roll call and quorum, introductions

With a quorum of twelve members present, Chair Shacat called the Environmental Council ("Council") to order at 9:10 AM.

## 2. Council anticipates possibly voting to hold a brief executive meeting at 9:00 AM, closed to the public, under section 92-4 and -5, Hawai'i Revised Statutes (HRS) (Approximately 15 minutes).

MOTION: Director Glenn moved and Member Parsons seconded that the Council go into executive session for the purpose of discussing questions and issues on the Council's powers, duties, and responsibilities relating to its rulemaking authority under Section 343-6, Hawai'i Revised Statutes, and pursuant to Sections 92-4, 92-5(a), and 92-7(a), Hawai'i Revised Statutes. Chair Shacat asked the public present for comments. There were no comments from the public. Chair Shacat began a roll call vote:

Abe – Aye

Begier – Excused

Dunbar-Co – Aye

Glenn – Aye  
Ka'aumoana – Aye  
Kaleikini – Excused  
Kaye – Aye  
Kinnaman – Aye  
Parsons – Aye  
Prentiss – Excused  
Shacat – Aye  
Terry – Aye  
Thoene – Aye  
Tulang – Aye  
Tuteur – Aye

The motion passed (12-0-0) and the Environmental went into executive session after excusing members of the public. Members of the public were invited to wait in Room 203 until the Council had concluded its executive session. After thanking the members of the public for waiting, Chair Shacat reconvened the Council in open session at 9:36 AM.

**3. Review and approval of prior meeting minutes:**  
**a. Meeting held on February 20, 2018.**

Member Kinnaman motioned and Member Ka'aumoana seconded that the minutes be approved as drafted. The motion passed with 11 ayes and Vice Chair Thoene, Member Dunbar-Co, and Member Tulang abstaining.

**4. Approval to hold public hearings pursuant to Chapter 91, HRS and Chapter 343, HRS to:**  
**(1) Repeal Chapter 11-200, Hawai'i Administrative Rules (HAR), entitled "Environmental Impact Statement Rules," and**  
**(2) Promulgate Chapter 11-200.1, HAR, entitled "Environmental Impact Statements Rules."**

MOTION: Director Glenn moved and Member Tulang seconded that the Council approve to hold public hearings pursuant to Chapter 91, HRS and Chapter 343, HRS on the repeal of Chapter 11-200, HAR, entitled "Environmental Impact Statement Rules", and the promulgation of Chapter 11-200.1, entitled "Environmental Impact Statement Rules". In making the motion, Director Glenn noted that the agenda has a typo in the name of the proposed Chapter 11-200.1—the word "Statements" should be singular.

A discussion followed about the versioning. Director Glenn described the documents used for decision making:

- Version 0.4a (clean) – shows the proposed repeal of Chapter 11-200, HAR, and promulgation of Chapter 11-200.1.
- Version 0.4a (track changes) – shows the changes made from Version 0.4 to provide assurance that only typographical changes were made.
- Version 0.4 Rationale – describes the reasoning for the language in Chapter 11-200.1, HAR.
- Version 0.4 Unofficial Ramseyer – shows the reorganization by section and paragraph of Chapter 11-200 into Chapter 11-200.1.

Chair Shacat noted that since the issuance of Version 0.4, Council Members Ka'auomoana, Terry, and Director Glenn submitted proposed amendments. In addition, Jacqui Hoover, Executive Director of the Hawai'i Island Economic Development Board, submitted comments for amendments. The Council also received comments via CiviComment, the online commenting platform.

Chair Shacat asked the public present if they had any comments or proposed amendments. Attendees said they had no amendments to offer. Ms. Simonpietri asked three questions to which Director Glenn responded: (1) the timeline for applicant actions; (2) inclusion of definitions in the rules for the ninth trigger items; and (3) deletion of "continuing administrative activities" as an exemption item.

With respect to the first question, Director Glenn responded that the statute in Section 343-5(e), Hawai'i Revised Statutes provides for an EIS acceptance as a matter of law in the event that an approving agency fails to make a determination on acceptability of the EIS within thirty-days of receipt by the approving agency.

With respect to the second question, Director Glenn responded that the Council's non-inclusion of definitions for processes described in the ninth trigger stemmed from its recognition that defining such terms was the prerogative of the Legislature and that providing administrative definitions in the rules might narrow the scope of what the Legislature intended to trigger the preparation of an environmental document.

With respect to the third question, Director Glenn responded that "continuing administrative activities" was deleted in earlier draft versions due to the lack of a clear distinction between actions having minimal impact and those that really have no impact at all. However, Version 0.4a retains the "continuing administrative activities" exemption general type because agencies may still need this based on feedback from agencies.

Chair Shacat asked, and Ms. Simonpietri affirmed, that her three questions were responded to. Chair Shacat thanked Ms. Simonpietri and proceeded to entertain motions for proposed amendments to the rules.

The Council agreed to entertain all proposed amendments, beginning with the five proposed by Member Terry.

#### MOTION RT1

Member Terry moved and Member Ka'auomoana seconded that Section 11-200.1-5(d) be amended to read: "of an applicant EA or EIS..."

Member Terry noted that there was no cited reason to exclude the ability of an applicant to withdraw an EA. Chair Shacat called for the question, and the Council unanimously approved the motion (14-0-0).

#### MOTION RT2

Member Terry moved and Member Begier seconded that Section 11-200.1-8(a)(2) be amended to delete the word "subsequent" in the phrase "... any future EA or subsequent EIS."

Member Terry noted that there are instances where an EIS might not be subsequent to an EA, due to Act 172, Session Laws of Hawai'i, 2012. Chair Shacat called for the question, and the Council unanimously approved the motion (14-0-0).

#### MOTION RT3

Member Terry moved and Member Tulang seconded that Sections 11-200.1-18(d)(10) and 11-200.1-21(10) be amended to insert the phrase “, if any,” so that it reads “Written comments, if any, and responses to the comments received, if any,...”.

A brief discussion ensued wherein Member Terry noted that not all comments received during pre-consultation may be responded to in the Draft EA. He noted that there is no statutory or rule-based requirement to respond. There is also no statutorily early consultation comment period, so it essentially extends indefinitely. Chair Shacat called for the question, and the Council approved the motion (14-0-0).

#### MOTION RT4

Member Terry moved and Director Glenn seconded that Section 11-200.1-24(s)(2) be amended in two parts as follows:

- (1) replace the phrase “Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways. ....” with the phrase “Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, in the manner for comment response prescribed in Section 11-200.1-20(d)(1) and (2) and (e);” and
- (2) delete paragraphs (2) and (3), and renumber (4) to (6) to be (3) to (5).

Member Terry noted that the changes were intended to replace an exact repeat of a previous section (over a page long), where it happens again in Section 26. Council members expressed support for retaining the language because the language is new, the Council did not want to require the reader to unduly cross-reference sections, and the Council wanted to be clear to the reader how to handle comments. Chair Shacat called for the question and the Council disapproved of the motion (1-13-0).

#### MOTION RT5

Member Terry moved and Member Tulang seconded that Section 11-200.1-29 be amended to replace the phrase “...within thirty days...” to “within forty-five days”.

A brief discussion ensued wherein Member Terry noted that 30-days was too short a time to: (1) find a date in which the Council can make quorum; (2) prepare an agenda and notify the public of a hearing; (3) allow the Council to study the issue of an EIS appeal; and (4) hold a meeting and get a decision.

Director Glenn read the statutory language in Section 343-5(e): “In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination.” Because the statute requires the Council to decide within thirty days, a rule to make it 45 days would be in conflict with the statute.

#### AMENDMENT TO MOTION RT5

Member Terry revised the language to replace “within thirty days ...” to “...within the statutorily prescribed period of time...”. This language would allow flexibility in the future should the statutory time period be changed. Chair Shacat called for the question on Motion RT5 as amended and the Council unanimously approved the motion as amended (14-0-0).

This completed Member Terry’s proposed amendments.

Chair Shacat called for a ten-minute recess from 10:44 to 10:57 AM.

Member Ka’umoana proposed that an amendment be made that would have an EIS be valid for only five years unless an action had made substantial progress. In support of the proposal, Member Ka’umoana distributed language related to supplemental EISs that had been included in Version 0.2 for possible re-introduction into Section 11-200.1-30 of the current draft. The language included the definition of “substantial commencement” from Section 2, Version 0.2 and the text from Section 26, Version 0.2. Director Glenn commented that most likely Member Ka’umoana would also want to include Section 27, Version 0.2, which included language on re-evaluation. Director Glenn also commented that it would take time to figure out the wording in order to integrate the language into Version 0.4. After discussion Member Ka’umoana agreed to table her proposal until after lunch, during which she would review and rewrite her motion.

The Council proceeded to consider Director Glenn’s proposed amendments.

#### MOTION SG1

Director Glenn moved and Member Terry seconded that Section 11-200.1-2 strike the following phrase “are notified of an opportunity to” so that the definition of an “EIS public scoping meeting” reads: “‘EIS public scoping meeting’ means a meeting in which agencies, citizen groups, and the general public assist the proposing agency or applicant in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.”

Director Glenn noted that the purpose of the EIS public scoping meeting is not to notify parties of the opportunity to assist, but rather to actually assist in developing the scope of the EIS. Chair Shacat called for the question and the Council unanimously approved the motion (14-0-0).

#### MOTION SG2

Director Glenn moved and Member Begier seconded that the definition of “Exemption list” found in Section 11-200.1-2 be revised to add the word “further” and delete the last sentence so that the definition reads as follows: “‘Exemption list’ means a list prepared by an agency pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15.”

Director Glenn noted that adding the word “further” clarifies that the activity does not require an EA or EIS. He also noted that deleting the last sentence is proper since it is about the process rather than defining the term. Chair Shacat called for the question and the Council unanimously approved the motion (14-0-0).

#### MOTION SG3

Director Glenn moved and Member Kaye seconded that Section 11-200.1-3 relating to the computation of time be revised by replacing the phrase after the word “unless” that reads “it is a Sunday or legal holiday” and with “... the last day falls on a State holiday, or nonbusiness day, in which case the last day shall be the next business day.”

Director Glenn noted that the language in Version 0.4a could be meant to state that the last day could fall on a Saturday, but that is not the case in the 1996 rules and not the intent of the Council to change how the last day in a time period is counted. The proposed amendment clarifies that the last day is still included but cannot fall on a Saturday, Sunday, or legal holiday.

The council debated the meanings of the terms: “working day”, “business day”, and “nonbusiness day”. Vice Chair Thoene suggested that the original motion be amended to read as follows after the word “unless”: “it is a Saturday, Sunday, or state holiday, in which case the last day shall be the next business day.” Director Glenn amended the motion as suggested and Chair Shacat called for the question on Motion SG3 as amended and the Council unanimously approved the motion as amended (14-0-0).

#### MOTION SG4

Director Glenn moved and Member Begier seconded that Sections 11-200.1-4(b)(7) and (8) delete the term “including” so that the sections read as follows:

“(7) – Draft EISs, draft supplemental EISs, and appropriate addendum documents for public review and forty-five day comment period.

(8) – Final EISs, final supplemental EISs, and appropriate addendum documents;”.

A brief discussion followed wherein Director Glenn noted that the word “including” could be misread to think the phrase modifies “Draft EIS”, rather than meant as a stand-alone separate item that is published, similarly for “Final EIS”. Member Terry recommended also striking the word “including” from item (9).

#### AMENDMENT TO MOTION SG4

Director Glenn amended the motion to remove the word “including” from (7), (8), and (9) as described above. Chair Shacat called for the question on Motion SG4 as amended and the Council unanimously approved the motion as amended (14-0-0).

#### MOTION SG5

Director Glenn moved and Member Terry seconded that Section 11-200.1-14(b) include the word “completed” so that the rule reads as follows: “...receipt of the applicant’s completed request for approval to the approving agency...”.

Director Glenn noted that many times applications to agencies for approvals are revised or submitted incorrectly and need to be resubmitted multiple times. This amendment would clarify that the 30-days begins from the completed request for approval. Chair Shacat noted

that "complete" may be a better word than "completed", as other permit applications refer to the "complete" application rather than a "completed" application.

#### AMENDMENT TO MOTION SG5

Director Glenn amended the motion to include the word "complete" instead of "completed", so that the rule reads as follows: "...receipt of the applicant's complete request for approval to the approving agency...". Chair Shacat called for the question on Motion SG5 as amended and the Council unanimously approved the motion as amended (14-0-0).

#### MOTION SG6

Director Glenn moved and Member Tulang seconded that Section 11-200.1-16(d) be revised as to delete the language:

"...provided that, in the event the council is unable to meet due to quorum when a concurrence for an agency exemption list is seven years or older, the agency may submit a letter to the council acknowledging that the existing exemption list is still valid. Upon attaining quorum, the council shall review the exemption list for concurrence. The council may review agency exemption lists periodically."

Director Glenn proposed replacing this language with the following:

- "(1) For exemption lists where an agency has no amendment, the agency may submit a letter to the council acknowledging that it considers the exemption list to be still valid. In the event the council is unable to meet due to quorum, the existing exemption list is considered valid.  
(2) For exemption lists where an agency requests amendment, the council shall meet to review the proposed changes. In the event that the council is unable to meet due to quorum, the existing exemption list is considered valid until the council attains quorum and meets to consider the proposed changes.  
(e) The council may review agency exemption lists periodically."

Director Glenn explained that this revision would address the potential issue of the Council losing quorum at the time an agency is making a good faith effort to maintain the validity of the exemption list. Council members discussed at length the validity of exemption lists, the notion of staleness, and the criteria for the Council's concurrence and revocation of concurrence. No decision was reached. Director Glenn withdrew the motion to rework the language for presentation after lunch.

#### MOTION SG7

Director Glenn moved and Member Terry seconded that Section 11-200.1-17(d) be revised by replacing the phrase "since the previous publication submittal deadline" with the phrase "on the eighth day of the month" so that the rule reads as follows:

"(d) Each agency shall produce its exemption notices for review upon request by the public or an agency and shall submit a list of exemption notices that the agency has created to the office for publication in the bulletin on the eighth day of each month pursuant to subchapter 4."

Director Glenn suggested that requiring submission of exemption notices every two weeks might be difficult for agencies to meet, especially as the new rules initially come into effect. Director Glenn noted that this language would still provide for a monthly publication date for exemptions, balancing public notification with giving agencies time to do internal

coordination to compile and submit the list to OEQC. After the discussion, Chair Shacat called for the question and the Council unanimously approved the motion (14-0-0).

This completed Director Glenn's proposed amendments.

The Council recessed from 12:15 PM to 1:16 PM.

The Council discussed the comments provided by Ms. Jacqui Hoover. The first comment regarded the inclusion of "reserve housing" or "workforce housing" in the section of the rules concerning affordable housing. The Council did not have sufficient information as to what constituted reserve housing or workforce housing and how the terms overlapped with affordable housing. There was a discussion on the definition of reserve housing and the different income requirements. The Council agreed that more information was needed before they felt ready to take any action on the proposal, perhaps provided during public hearings. Member Terry agreed to contact Ms. Hoover on behalf of the Council.

The Council then discussed Ms. Hoover's comment on the consistent use of the adjective "substantive" with respect to instances of the word "comment" throughout the rules. Director Glenn commented that because there were one-hundred and fifty-seven instances of the word "comment" in the rules, the adjective "substantive" is not included before every instance of the word "comment". The Council declined to propose an amendment so broad in nature. Member Terry agreed to follow up with Ms. Hoover to find out if she had specific instances of concern.

The Council then discussed the seven public comments submitted via the CiviComment website.

- (1) Anonymous comment on 2/21/2018 at 1:32 AM. With respect to Section 11-200.1-2, definition of EIS preparation notice, the commenter suggested that the definition specify the level of detail required in an EISPN, so that the definition include the language, "Content detail shall be commensurate with an environmental assessment (EA) if prepared without first completing an EA." Member Terry expressed concern that such a revision would essentially require the preparer of an EISPN to conduct an EA, contravening the provisions of Act 172, 2012 Session Laws, that provided for a direct to EIS process. The Council briefly discussed this comment and declined to take action.
- (2) Comment of Eileen Kechloian on 2/25/2018 at 8:45 AM. With respect to Section 11-200.1-13, item 11, the commenter suggested that the significance criteria "also include areas of shallow water tables and/or where water flows upward and/or downward from an aquifer or an area containing seeps and/or springs". Member Ka'auomoana noted that itemizing a list may be problematic because it may lead to continuous expansion instead of being read as a list of examples. Director Glenn noted that the detail suggested by the commenter can be provided as guidance to those preparing a document. The Council declined to take action.
- (3) Anonymous comment on 2/21/2018 at 1:49 AM. With respect to Section 11-200.1-13, item 4, the commenter suggested that the rules "define community as it pertains to cultural practices." The Council discussed the comment and declined to introduce this as an amendment to the rules since its definition of community may contravene the statutory definition set forth by the State.

In comparing the language in the definition of “significant effect” in the statute as compared to Section 11-200.1-13, item 4, the Council observed that the statute uses the phrase “of the community and State” while the 1996 rules and Version 0.4a use “of the community or State”.

MOTION: Member Prentiss moved and Member Dunbar-Co seconded that the language in item 4 of Section 11-200.1-13 be revised to be consistent with the statutory definition by deleting the word “or” and replacing it with the word “and” so that the language in item 4 reads: “Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and State.”

The Council discussed and came to consensus that changing the wording may unintentionally make the meaning too restrictive and that the language is unchanged from the 1996 wording, which has not been a problem to date. Chair Shacat called for the question and the Council did not pass the motion (1-13-0).

- (4) Comment of Eileen Kechloian on 2/25/2018 at 10:51 AM. With respect to Section 11-200.1-13, item 13, the commenter suggested that the rules include the level of emission considered substantial in area or amount, a description of whether the amount varies by gas, a list of gases, and the quantity per each gas. The Council noted that this level of detail need not be specified in the rule, as the other criteria also do not provide that level of detail, and that such detail is more appropriate in the form of guidance to those preparing a document. The Council declined to take action.
- (5) Anonymous comment on 2/21/2018 at 1:53 AM. With respect to Section 11-200.1-16(d), the commenter proposed to “[r]equire OEQC to submit all public comments and agency review comments on the pre-existing exemption list, prior to continuing with solicitation of public comment on renewal (with or with [sic] changes) or revision. Should OEQC agency and public comments not be provided by OEQC, the agency shall submit a detailed review clarifying its understanding of applicability as used during the preceding period.” The Council agreed that past document retention by OEQC (subject to Department of Health document retention policies) was poor. The Council declined to take action.
- (6) Anonymous comment on 2/21/2018 at 2:38 AM. With respect to Section 11-200.1-23(d), the commenter proposed that “[o]ral comments may be limited to three minutes per individual” and that “[o]ral comments from corporations or non-persons shall not be accepted or acknowledged.” The Council noted that the time provided should be commensurate to the number of people present and that all individuals present who desire to provide oral comments should have the opportunity to do so, regardless of the affiliation of the individual. The Council declined to take action to include specific details on the conduct of the EISPN public scoping meeting.
- (7) Anonymous comment on 2/21/2018 at 2:34 AM. With respect to Section 11-200.1-23(d), the commenter proposed adding a subsection (e) that reads as follows: “If in the course of public comment or scoping, the minimum content requirements (equivalent to a draft EA) are identified as potentially being insufficiently addressed, the accepting official must review content requirements, comments and concerns identified regarding the EISPN, and publish a written decision if the EISPN meets minimum (Draft EA)

content requirements. If not met, a second EISPN must be published and the process may be repeated until such as minimum content requirements are met as determined by the accepting agency/official." The Council discussed the proposed language noting that it may contravene the legislative intent as set forth in Act 172, Session Laws of Hawaii, Regular Session of 2012, for providing for the direct preparation of an EA. The Council declined to take action to include this as an amendment to the rules.

- (8) Anonymous comment on 2/21/2018 at 2:41 AM. With respect to Section 11-200.1-32(b), the commenter proposed that item 3 include the addition of the phrase "or quasi-judicial (i.e. contested case)" so that item 3 reads as follows: "A judicial or quasi-judicial (i.e., contested case) proceeding regarding the proposed action shall not count towards the five-year time period." The Council engaged in a discussion as to the intended scope of this retroactivity provision.

MOTION: Director Glenn moved and Member Begier seconded that Section 11-200.1-32(b)(3) include the phrase "pursuant to Section 343-7, HRS" rather than "regarding the proposed action", so that the rule reads as follows: "A judicial proceeding pursuant to Section 343-7, HRS shall not count towards the five-year time period." The intent of the Council is focus the retroactivity section to Chapter 343, HRS, for which the Council is authorized to make rules. Chair Shacat called for the question. The Council unanimously approved the motion (14-0-0).

This completed discussion of the CiviComment comments.

The Council recessed from 2:48 PM to 3:02 PM. Member Kinnaman left the meeting at approximately 3:00 p.m.

The Council resumed discussion of Member Ka'auomoana's proposal.

MOTION: Member Ka'auomoana moved that the rules be amended to include the following language: "A EIS is valid for a period of five years after acceptance by OEQC. If a project is not "substantially" (as defined in the 343 rules, revision 4.0) completed with that time frame, a supplemental or new EIS must be prepared to provide updated information and potential impacts on the environment." A discussion ensued that focused on reintroduction of the definition of substantial commencement as used in the City and County of Honolulu, Department of Planning and Permitting (DPP) "Green Sheet". The Council heard public comment from Ms. Antolini, who described DPP's creation and use of the Green Sheet after the Turtle Bay litigation and noted that it is a "road-tested" approach for determining whether changes to a project or the environment warrant a supplemental EIS. Director Glenn also described Section 11-200-27, HAR (1996), and the genesis of the Green Sheet, explaining that the Green Sheet does not establish or enforce a shelf life, but is rather a tool to facilitate an agency's "re-evaluation". After Director Glenn's explanation and a brief discussion among Council members, Member Ka'auomoana withdrew her motion and added that the Green Sheet should be specific to place (i.e., tailored to each county, island, etc.).

With respect to tabled Motion SG6, Director Glenn discussed the concept of revocation of a concurrence, expressing concern that the exemption concurrence process could be misconstrued as an approval, which is not the intent of the Council. Further, he suggested that perhaps for exemptions the only requirement for submittal to the OEQC for publication in the

bulletin should be the list of exemption notices, regardless of the concurrence status of the exemption list, instead of requiring agencies with no concurrence be required to submit the exemption notices. Director Glenn did not have specific language prepared. The Council would like to hear feedback from the public via the public hearing.

MOTION: Member Terry moved and Member Tulang seconded that the Council approve requesting public hearings for the repeal of Chapter 11-200, HAR, entitled "Environmental Impact Statement Rules", and the promulgation of Chapter 11-200.1, HAR, entitled "Environmental Impact Statement Rules", as amended at this meeting. Chair Shacat called for the question by roll call.

Abe – Aye  
Begier – Aye  
Dunbar-Co – Aye  
Glenn – Aye  
Ka'auomoana – Aye  
Kaleikini – Excused  
Kaye – Aye  
Kinnaman – Excused  
Parsons – Aye  
Prentiss – Aye  
Shacat – Aye  
Terry – Aye  
Thoene – Aye  
Tulang – Aye  
Tuteur – Aye

The Council unanimously approved the motion (13-0-0).

**5. Approval of the OEQC Director to act on the Council's behalf in administrative matters regarding obtaining recommendations and administrative approvals for public hearings and conducting them.**

MOTION: Member Kaye moved and Member Ka'auomoana seconded that the Council delegate authority to Director Glenn to execute anticipated recommendations and administrative matters with respect to rulemaking on behalf of the Council.

The Council agreed that it understood administrative matters to include the items as enumerated on the agenda. The Council requested Director Glenn to return to the Council if any questions of a substantive nature regarding the rules arises, which Director Glenn agreed to do. The Council unanimously approved the motion (13-0-0).

Chair Shacat thanked everyone for the perseverance and dedication to achieve this milestone.

**6. Adjournment**

MOTION: Member Prentiss moved and Member Kaye seconded that the Council adjourn until its next meeting. The Council unanimously approved the motion (13-0-0).

Amendments for Version 0.4a March 6 Environmental Council Meeting from Ron Terry

No	Page/ Para	Rule Section 11- 200.1-	Language	Rationale
RT 1	10/last	5(d)	"...of an applicant EIS,..." to "...of an applicant EIS or EA,..."	No cited reason to exclude ability of applicant to withdraw an EA
RT 2	16, 3 <sup>rd</sup> to last	8(a)(2)	"...any future EA or subsequent EIS."	EIS may NOT be subsequent to an EA.
RT 3	28, item 10          Same issue: 32	18(d)(10)       21((10)	"Written comments and responses to the comments received and made..." to  "Written comments, if any, and responses to the comments received, if any, made..."  "Written comments and responses to the comments received pursuant.." to  "Written comments, if any, and responses to the comments received, if any, pursuant.."	Not all comments received during pre-consultation may be responded to in the Draft EA. There is no statutory (or rule-based) requirement to respond. There is no statutory early consultation comment period, so it essentially extends indefinitely.
RT 4	40	24(s)(2)	"Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways....."  To "Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, in the manner for comment response prescribed in Section 11-200.1-20(d(1) and (2) and (e)."  Then delete the rest of (2), and (3), and renumber (4)-(6) to (3) to (5)	This is an exact repeat of a previous section, and it is over a page long!  It happens again in Section 26. I suggest the same replacement there.
RT 5	47	29	"within 30 days..." to "within 45 days..."	30 days is too short to 1) find a date in which the Council can make quorum; 2) prepare an agenda and notify the public of a hearing; 3) allow the Council to study the issue of an EIS appeal; 4) hold a meeting and get a decision.

**From:** Makaala Kaaumoana  
**To:** [Glenn Scott J.](#); [Joseph Shacat](#)  
**Subject:** EC Chapter 343 rules revision proposed amendment  
**Date:** Thursday, March 1, 2018 9:15:52 AM

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Aloha Director Glenn and Chair Shacat,

I cannot adequately express my appreciation and respect for the work you have done on the Chapter 343 rules revisions and the process you have provided for our Council and the community to meaningfully participate. I am very grateful for the opportunity to play a small role in the effort.

The draft rules are well organized and written in plain English and the attached rationale provides the Council and community the background and reasoning for each revision. It is very helpful in our work as Council members to provide meaningful outreach.

I note that there is no proposed rule addressing the issue of a "shelf life" for an EIS included in this draft document. I participated in several discussions at Council on this subject and understand the challenges such a "time limit" will present to EIS preparers and project developers but feel strongly that given recent experience in Hawaii with "aged" EIS's and current science and events related to climate change, it is imperative that an EIS have a time limit for application for a project. It makes common sense and likely fiscal sense as well. Expensive litigation would likely ensue regarding any EIS that "outlives" its validity.

Therefore, I would like to offer the following amendment:

" An EIS is valid for a period of five years after acceptance by OEQC. If a project is not "substantially" (as defined in the 343 rules revision 4.0) completed within that time frame, a supplemental or new EIS must be prepared to provide updated information and potential impacts on the environment."

The rationale I use for this amendment is as stated above in addition to recent court rulings regarding "stale" EIS's such as Turtle Bay.

Mahalo for your consideration of this amendment. I look forward to the discussion at Council.

Mahalo,  
Makaala

--

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**WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES**

Environmental Council

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

1 land use, population density or growth rate, and related effects on air, ~~and~~ water,<sup>73</sup> and other  
2 natural systems, including ecosystems.  
3  
4 "Significant effect" or "significant impact" means the sum of effects on the quality of the  
5 environment, including actions that irrevocably commit a natural resource, curtail the range of  
6 beneficial uses of the environment, are contrary to the state's State's<sup>74</sup> environmental policies or  
7 long-term environmental goals and guidelines as established by law, ~~or~~<sup>75</sup> adversely affect the  
8 economic welfare,<sup>76</sup> ~~or~~ social welfare, or<sup>77</sup> cultural practices of the community and State,<sup>78</sup> or  
9 are otherwise set forth in section 11-200-12 ~~of this chapter~~<sup>79</sup>.  
10  
11 "Substantial commencement" means that a an applicant<sup>80</sup> project or program action<sup>81</sup> has  
12 reached the stage where its last approval<sup>82</sup> has been granted and has advanced to the point  
13 where financial commitments are in place and scheduled and design is essentially complete, or,  
14 for government programs an agency action<sup>83</sup> for which an approval is not required, the project  
15 or program program or project<sup>84</sup> has advanced to the point where financial commitments are in  
16 place and scheduled and design is essentially complete.<sup>85</sup>  
17  
18  
19  
20

---

<sup>73</sup> Housekeeping.

<sup>74</sup> Housekeeping.

<sup>75</sup> Housekeeping.

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

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

<sup>78</sup> Updates language to match Act 50 (2000) on cultural practices. Act 50 (2000) added "cultural practices" to the list of adverse effects that could constitute "significance". "Of the community and State" is language from chapter 343, HRS, that Act 50 (2000) also added to the definition of "significant effect".

<sup>79</sup> Housekeeping.

<sup>80</sup> Clarifies the distinction between applicant actions and government actions.

<sup>81</sup> Increases readability.

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

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

<sup>84</sup> Global edit changing word order of "project or program" to "program or project" to align with the definition of "action" in section 343-2, HRS.

<sup>85</sup> Definition is proposed to help clarify when an action has progressed sufficiently to no longer require examination for supplemental environmental review. This language draws on other statutes and case law. In the context of district boundary changes under section 205-4, HRS, the Hawaii Supreme Court has held that substantial commencement occurred when, in accordance with its representations to the Land Use Commission, a developer had begun constructing homes, and had expended more than \$20 million dollars. DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 339 P.3d 685, 688 (Haw. 2014).

1 **§11-200-27 Supplemental EIS<sup>648</sup> Determination of**  
2 **Applicability**

3 The accepting authority or approving agency in coordination with the original accepting authority  
4 shall be responsible for determining whether a supplemental ~~statement~~ EIS is required. If a  
5 period of five years has elapsed since the acceptance of the final EIS, and the ~~project or~~  
6 program program or project<sup>649</sup> has not substantially commenced, the accepting authority or  
7 approving agency shall formally ~~re-evaluate~~ the need for a supplemental ~~statement~~ EIS and  
8 make a determination of whether a supplemental ~~statement~~ EIS<sup>650</sup> is required. A written  
9 summary of this evaluation and the<sup>651</sup> This determination will be submitted to the office for  
10 publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public  
11 review supplemental ~~statements~~ EISs whenever the proposed action for which ~~a~~ an<sup>652</sup>  
12 ~~statement~~ EIS was accepted has been modified to the extent that new or different  
13 environmental impacts are anticipated. A supplemental ~~statement~~ EIS shall be warranted when  
14 the scope of an action has been substantially increased, when the intensity of environmental  
15 impacts will be increased, when the mitigating measures originally planned ~~are~~ will not to be  
16 implemented, or where new circumstances or evidence have brought to light different or likely  
17 increased environmental impacts not previously dealt with.

18  
19 [Eff 12/6/85; am and comp AUG 31 1996] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)  
20  
21  
22

---

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

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

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

<sup>651</sup> Sets a default five-year period for agencies to take a look at whether a supplemental EIS may or may not be required, but also puts a boundary limit on when that period is no longer relevant but setting “substantial commencement” as a point where supplemental EISs may no longer be required. A definition for substantial commencement is proposed in section 11-200-2.

<sup>652</sup> Housekeeping.

Amendment	Location	Language	Rationale
SG1	§ 2, p. 6	"EIS public scoping meeting" means a meeting in which agencies, citizen groups, and the general public <del>[are notified of the opportunity to]</del> assist the proposing agency or applicant in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.	The purpose of the EIS public scoping meeting is not to notify parties of the opportunity to assist, but rather to actually assist in developing the scope of the EIS.
SG2	§ 2, p. 6	"Exemption list" means a list prepared by an agency pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring <u>further</u> chapter 343, HRS environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15. <del>[An agency may exempt activities in part one and actions in part two, subject to the conditions of this chapter and chapter 343, HRS, from preparation of an EA.]</del>	Add the word "further" to clarify that the activity does not require an EA or EIS. Delete the last sentence because that is about the process rather the defining the term.
SG3	§ 3, pp. 8 & 9	In computing any period of time prescribed or allowed by this chapter, order of the council, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless <del>[it is a Sunday or legal holiday.]</del> <u>the last day falls on a state holiday or nonbusiness day, in which case the last day shall be the next business day.</u>	The language in Version 0.4a could be mean to state that the last day could fall on a Saturday, but that is not the case in the 1996 rules and not the intent of the council to change how the last day in a time period is counted. The proposed amendment clarifies that the last day is still included but cannot fall on a Saturday, Sunday, or legal holiday. The proposed amendment language is from the 1996 Rules, section 3(c).
SG4	§ 4(b)(7) & (8), p. 9	(7) Draft EISs, <del>[including]</del> draft supplemental EISs, and appropriate addendum documents for public review and forty-five day comment period; (8) Final EISs, <del>[including]</del> final supplemental EISs, and appropriate addendum documents;	The word "including" may be misread to think the phrase modifies Draft EIS, rather than meant as a stand-alone separate item that is published, similarly for Final EIS.
SG5	§ 14(b), p. 21	(b) For an applicant action, within thirty days from the receipt of the applicant's <u>completed</u> request for approval to the approving agency, through its judgment and experience, an approving agency shall assess the significance of the potential impacts of the action, including the overall cumulative impact in light of related past, present, and reasonably foreseeable actions in the area affected, to determine the level of environmental review necessary for the action.	Many times applications to agencies for approvals are revised or submitted incorrectly and need to be resubmitted multiple times. This amendment would clarify that the 30 days begins from the completed request for approval.

SG6	§ 16(d), p. 25	<p>(d) These exemption lists and any amendments to the exemption lists shall be submitted to the council for review and concurrence no later than seven years after the previous concurrence<del>[-, provided that, in the event the council is unable to meet due to quorum when a concurrence for an agency exemption list is seven years or older, the agency may submit a letter to the council acknowledging that the existing exemption list is still valid. In the event the council is unable to meet due to quorum, the exemption list is seven years or older, and the agency submits a letter requesting changes to the exemption list. Upon attaining quorum, the council shall review the exemption list for concurrence. The council may review agency exemption lists periodically].</del></p> <p><u>(1) For exemption lists where an agency has no amendment, the agency may submit a letter to the council acknowledging that it considers the exemption list to still be valid. In the event the council is unable to meet due to quorum, the existing exemption list is considered valid.</u></p> <p><u>(2) For exemption lists where an agency requests amendment, the council shall meet to review the proposed changes. In the event the council is unable to meet due to quorum, the existing exemption list is considered valid until the council attains quorum and meets to consider the proposed changes.</u></p> <p><u>(e) The council may review agency exemption lists periodically.</u></p>	<p>Add language for when the council does not have quorum that distinguishes between agencies claiming that their exemption list is still valid and those requesting an adjustment. The council can always choose to review a concurrence but is not obligated to do so for agencies that claim the list is valid.</p>
SG7	§ 17(d), pp. 26 & 27	<p>(d) Each agency shall produce its exemption notices for review upon request by the public or an agency, and shall submit a list of exemption notices that the agency has created <del>[since the previous publication submittal deadline]</del> to the office for publication in the bulletin <u>on the eighth day of each month</u> pursuant to subchapter 4.</p>	<p>Change the publication of the list of exemption notices to the 8th of each month instead of every bulletin. This balances public notification with giving agencies time to do internal coordination to compile and submit the list to the OEQC.</p>

**From:** HIEDB - Jacqui Hoover  
**To:** [HI Office of Environmental Quality Control](#)  
**Subject:** RE: Proposed Rule Changes Version 0.4  
**Date:** Monday, March 5, 2018 2:34:42 PM  
**Attachments:** [image001.png](#)

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Aloha,

Please accept the following comments on Version 0.4 of proposed rules changes which are submitted on behalf of the Hawai`i Island Economic Development Board.

We appreciate the commitment of and due diligence of the Council to Hawaii's environment and continuing to work with us and others on the proposed rule changes.

HIEDB requests that "reserved housing or workforce housing" be included in the section on affordable housing.

HIEDB requests that with respect to response to comments, that the word "substantive" is included consistently throughout the rules (versus in some places and not others in the current draft).

Mahalo for your time and consideration,

Jacqui L. Hoover, Executive Director & COO



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"Agency" means any department, office, board, or commission of the state or county government that is part of the executive branch of that government.

"Applicant" means any person that, 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 implementation of an action.

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

"Council" means the environmental council.

"Cumulative impact" means the impact on the environment that 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.

"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 without the use of judgment or discretion.

"Draft environmental assessment" means the EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a finding of no significant impact (FONSI).

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (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, immediate or delayed. Effects may also include those effects resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"EIS preparation notice", "EISPN", or "preparation notice" means a determination that an action may have a significant effect on the environment and, therefore, will require the preparation of an EIS, based on either an EA or an agency's judgment and experience that the proposed action may have a significant effect on the environment.001

#001

Posted by **Anonymous** on **02/21/2018** at **1:32am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Add detail regarding level of detail required. Suggest:

Content detail shall be commensurate with an Environmental Assessment if prepared without first completing an EA.

**§11-200.1-13 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 impacts, 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 is likely to:

- (1) Irrevocably commit a natural, cultural, or historic resource;
- (2) Curtail the range of beneficial uses of the environment;
- (3) Conflict with the State's environmental policies or long-term environmental goals established by law;
- (4) Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community or State<sup>003</sup>;
- (5) Have a substantial adverse effect on public health;
- (6) Involve adverse secondary impacts, such as population changes or effects on public facilities;
- (7) Involve a substantial degradation of environmental quality;
- (8) Is individually limited but cumulatively has substantial adverse effect upon the environment or involves a commitment for larger actions;
- (9) Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
- (10) Have a substantial adverse effect on air or water quality or ambient noise levels;
- (11) Have a substantial adverse effect on or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters<sup>002</sup>;

## #002

Posted by **Eileen Kechloian** on **02/25/2018** at **8:45am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Should this also include areas of shallow water tables and/or where water flows upward and/or downward from an aquifer or an area containing seeps and/or Springs?

## #003

Posted by **Anonymous** on **02/21/2018** at **1:49am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Define community as it pertains to cultural practices.

- (12) Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or,
- (13) Require substantial energy consumption or emit substantial greenhouse gases. [Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-6)

004

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

**Review.** (a) For an agency action, through its judgment and experience, a proposing agency shall assess the significance of the potential impacts of the action, including the overall cumulative impact in light of related past, present, and reasonably foreseeable actions in the area affected, to determine the level of environmental review necessary for the action.

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

(c) If the proposing agency or approving agency determines, through its judgment and experience, that the action will individually and cumulatively probably have minimal or no significant effects, and the action is one that is eligible for exemption under subchapter 8, then the agency or the approving agency in the case of an applicant may prepare an exemption notice in accordance with subchapter 8.

(d) If the proposing agency or approving agency determines, through its judgment and experience, that the action is not eligible for an exemption, then the proposing agency shall prepare or the approving agency shall require the applicant to prepare an EA beginning with a draft EA in accordance with subchapter 9, unless:

- (1) In the course of preparing the draft EA, the proposing agency or approving agency determines, through its judgment and experience, that the action may have a significant effect and therefore require preparation of an EIS, then the proposing agency may prepare, or the approving

#004

Posted by **Eileen Kechloian** on **02/25/2018** at **10:51am**

*Type: Comment*

*Agree: 0, Disagree: 0*

What level of emission is considered substantial? Is this controlled by the area of the project or is it an amount? If it is an amount does it vary by the gas? What would the quantity be per each gas. List gases.

routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveyances; and

- (2) Types of actions that the agency considers to be included within the exempt general types listed in section 11-200.1-15.

(b) An agency may use part one of its exemption list, developed pursuant to (a)(1), to exempt a specific activity from preparation of an EA and the requirements of section 11-200.1-17 because the agency considers the specific activity to be de minimis.

(c) An agency may use part two of its exemption list, developed pursuant to (a)(2), to exempt from preparation of an EA a specific action that the agency determines to be included under the types of actions in its exemption list, provided that the agency fulfills the exemption notice requirements set forth in section 11-200.1-17 of this subchapter and chapter 343, HRS.

(d) These exemption lists and any amendments to the exemption lists shall be submitted to the council for review and concurrence no later than seven years after the previous concurrence, provided that, in the event the council is unable to meet due to quorum when a concurrence for an agency exemption list is seven years or older, the agency may submit a letter to the council acknowledging that the existing exemption list is still valid. Upon attaining quorum, the council shall review the exemption list for concurrence. The council may review agency exemption lists periodically. [Eff: 005] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

**§11-200.1-14 Exemption Notices.** (a) Each agency shall create an exemption notice for an action that it has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(2) or that an agency considers to be included within a general type of action pursuant to section 11-200.1-15. An agency may create an exemption notice for an activity that is has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(1) or that an agency considers to be a routine activity and ordinary function within the jurisdiction or expertise of the agency

#005

Posted by **Anonymous** on **02/21/2018** at **1:53am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Require OEQC to submit all public comments and agency review comments on the pre-existing exemption list, prior to continuing with solicitation of public comment on renewal (with or with changes) or revision. Should OEQC agency and public comments not be provided by OEQC, the agency shall submit a detailed review clarifying its understanding of applicability as used during the preceding period.

agencies, including the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals that the proposing agency reasonably believes to be affected. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft EIS prior to the time the draft EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.

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

(d) No fewer than one EIS public scoping meeting addressing the scope of the draft EIS shall be held on the island(s) most affected by the proposed action, within the public review and comment period in subsection (c). The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded. 006  
007 [Eff ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)

**§11-200.1-24 Content Requirements; Draft Environmental Impact Statement.** (a) The draft EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The scope of the draft EIS may vary with the scope of the proposed action and its impact, taking into

## #006

Posted by **Anonymous** on **02/21/2018** at **2:38am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Oral comments may be limited to 3 minutes per individual. Oral comments from corporations or non-persons shall not be accepted or acknowledged.

## #007

Posted by **Anonymous** on **02/21/2018** at **2:34am**

*Type: Comment*

*Agree: 0, Disagree: 0*

Add (e). If in the course of public comment or scoping, the minimum content requirements (equivalent to a draft EA) are identified as potentially being insufficiently addressed, the accepting official must review content requirements, comments and concerns identified regarding the EISPN, and publish a written decision if the EISPN meets minimum (Draft EA) content requirements. If not met, a second EISPN must be published and the process may be repeated until such as minimum content requirements are met as determined by the accepting agency/official.

## RETROACTIVITY AND SEVERABILITY

**§11-200.1-32 Retroactivity.** (a) The rules shall apply immediately upon taking effect, except as otherwise provided below.

(b) Hawaii Administrative Rules (HAR) chapter 11-200 shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of HAR chapter 11-200.1, provided that:

- (1) For EAs, if the draft EA was published by the office prior to the adoption of HAR chapter 11-200.1 and has not received a determination within a period of five years from the implementation of HAR chapter 11-200.1, then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200.1. All subsequent environmental review, including an EISPN must comply with HAR chapter 11-200.1.
- (2) For EISs, if the EISPN was published by the office prior to the adoption of HAR chapter 11-200.1 and the final EIS has not been accepted within five years from the implementation of HAR chapter 11-200.1, then the proposing agency or applicant must comply with the requirements of HAR chapter 11-200.1.
- (3) A judicial proceeding regarding the proposed action shall not count towards the five-year time period.

(c) Exemption lists that have received concurrence under HAR chapter 11-200 may be used for a period of seven years after the adoption of HAR chapter 11-200.1, during which time the agency must revise its list and obtain concurrence from the council in conformance with HAR chapter 11-200.1. [Eff ] (Auth: HRS § 343-6) (Imp: HRS § 343-6)

**§11-200.1-33 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 ] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-6, 343-8)

#008

Posted by **Anonymous** on **02/21/2018** at **2:41am**

*Type: Comment*

*Agree: 0, Disagree: 0*

or quasi-judicial (i.e. contested case)