

HAWAI‘I ENVIRONMENTAL IMPACT STATEMENT LAWS

Unofficial Compilation – November 2016

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HRS CHAPTER 341 ENVIRONMENTAL QUALITY CONTROL

Sections

§341-1 Findings and purpose

§341-2 Definitions

§341-3 Office of environmental quality control; environmental center; environmental council

§341-4 Powers and duties of the director

§341-5 Repealed

§341-6 Functions of the environmental council

Note

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2017 or until completion. L 2012, c 218.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-.htm

§341-1 Findings and purpose.

The legislature finds that the quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an optimum balance between economic development and environmental quality deserves the most thoughtful consideration, and that the maintenance of the optimum quality of the environment deserves the most intensive care.

The purpose of this chapter is to stimulate, expand and coordinate efforts to determine and maintain the optimum quality of the environment of the State.

[L 1970, c 132, pt of §1]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0001.htm

§341-2 Definitions.

As used in this chapter, unless the context otherwise requires:

"Center" means the University of Hawaii environmental center established in section [304A-1551].

"Council" means the environmental council established in section 341-3(c).

"Director" means the director of environmental quality control.

"Office" means the office of environmental quality control established in section 341-3(a).

"University" means the University of Hawaii.

[L 1970, c 132, pt of §1; am L 2006, c 75, §12]

Revision Note

In definition of "center", "environmental center" substituted for "ecology or environmental center".

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0002.htm

§341-3 Office of environmental quality control; environmental center;
environmental council.

- (a) There is created an office of environmental quality control that shall be headed by a single executive to be known as the director of environmental quality control who shall be appointed by the governor as provided in section 26-34. This office shall implement this chapter and shall be placed within the department of health for administrative purposes. The office shall perform its duties under chapter 343 and shall serve the governor in an advisory capacity on all matters relating to environmental quality control.
- (b) The environmental center within the University of Hawaii shall be as established under section [304A-1551].
- (c) There is created an environmental council not to exceed fifteen members. Except for the director, members of the environmental council shall be appointed by the governor as provided in section 26-34. The council shall be attached to the department of health for administrative purposes. Except for the director, the term of each member shall be four years; provided that, of the members initially appointed, five members shall serve for four years, five members shall serve for three years, and the remaining four members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. The director shall be an ex officio voting member of the council. The council chairperson shall be elected by the council from among the appointed members of the council.

Members shall be appointed to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the discharge of their duties.

[L 1970, c 132, pt of §1; am L 1980, c 302, pt of §2; am L 1983, c 140, §1; am L 1987, c 233, §1; am L 2006, c 75, §13]

Law Journals and Reviews

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0003.htm

§341-4 Powers and duties of the director.

- (a) The director shall have such powers delegated by the governor as are necessary to coordinate and, when requested by the governor, to direct pursuant to chapter 91 all state governmental agencies in matters concerning environmental quality.
- (b) To further the objective of subsection (a), the director shall:
 - (1) Direct the attention of the university community and the residents of the State in general to ecological and environmental problems through the center and the council, respectively, and through public education programs;
 - (2) Conduct research or arrange for the conduct of research through contractual relations with the center, state agencies, or other persons with competence in the field of ecology and environmental quality;
 - (3) Encourage public acceptance of proposed legislative and administrative actions concerning ecology and environmental quality, and receive notice of any private or public complaints concerning ecology and environmental quality through the council;
 - (4) Recommend programs for long-range implementation of environmental quality control;
 - (5) Submit direct to the governor and to the legislature such legislative bills and administrative policies, objectives, and actions, as are necessary to preserve and enhance the environmental quality of the State;
 - (6) Conduct public educational programs; and
 - (7) Offer advice and assistance to private industry, governmental agencies, or other persons upon request.
- (c) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of implementing this chapter.

[L 1970, c 132, pt of §1; am L 1978, c 161, §1; am L 1985, c 127, §3; am L 1987, c 185, §1; am L 2001, c 247, §1]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0004.htm

§341-5 REPEALED.
L 2006, c 75, §17.

Cross References

For present provision, see §304A-1551.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0005.htm

§341-6 Functions of the environmental council.

The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director pursuant to section 341-4(b)(3). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and with the assistance of the director shall make an annual report with recommendations for improvement to the governor, the legislature, and the public no later than January 31 of each year. All state and county agencies shall cooperate with the council and assist in the preparation of such a report by responding to requests for information made by the council. The council may delegate to any person such power or authority vested in the council as it deems reasonable and proper for the effective administration of this section and chapter 343, except the power to make, amend, or repeal rules.

[L 1970, c 132, pt of §1; am L 1974, c 248, §1; am L 1983, c 140, §2]

Revision Note

Section "341-4(b)(3)" substituted for "341-4(b)(4)".

Law Journals and Reviews

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a State EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0341/HRS_0341-0006.htm

HRS CHAPTER 343 ENVIRONMENTAL IMPACT STATEMENTS

Sections

- §343-1 Findings and purpose
- §343-2 Definitions
- §343-3 Public records and notice
- §343-4 Repealed
- §343-5 Applicability and requirements
- §343-5.5 Exception to applicability of chapter
- §343-6 Rules
- §343-6.5 Waiahole water system; exemption
- §343-7 Limitation of actions
- §343-8 Severability

Note

Broadband services; exemption from certain permitting requirements through 2017. L 2011, c 151; L 2013, c 264, §3 (repealed June 30, 2018).

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2017 or until completion. L 2012, c 218.

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Law Journals and Reviews

Ke Ala Pono--The Path of Justice: The Moon Court's Native Hawaiian Rights Decisions. 33 UH L. Rev. 447 (2011).

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

Case Notes

Environmental impact statement addressed all statutory requirements of chapter, was compiled in good faith, and set forth sufficient information to enable decisionmaker to consider fully the environmental factors involved. 81 H. 171, 914 P.2d 1364.

Chapter does not conflict with Hawaiian homes commission act, has only incidental impact on Hawaiian home lands, and is not inconsistent with interests of the beneficiaries; thus, chapter applies to Hawaiian home lands. 87 H. 91, 952 P.2d 379.

HHCA §204 not violated by application of this chapter. 87 H. 91, 952 P.2d 379.

Where lease was executed in contravention of this chapter, power plant developers were not "existing Hawaiian homes commission act lessees"; trial court's decision that the lease was void did not deprive developers of any interest they were entitled to under the law. 106 H. 270, 103 P.3d 939.

Appellants established standing where they showed threatened injuries under the traditional injury-in-fact test and procedural injuries based on a procedural right test; the threatened injury in fact was due to defendant's decision to go forward with harbor improvements and allow the superferry project to operate at Kahului harbor without conducting an environmental assessment; the procedural injury was based on various interests appellants identified that were threatened due to the violation of their procedural rights under this chapter. 115 H. 299, 167 P.3d 292.

Where the record showed that the department of transportation did not consider whether its facilitation of the Hawaii superferry project would probably have minimal or no significant impacts, both primary and secondary, on the environment, its determination that the improvements to Kahului harbor were exempt from the requirements of this chapter was erroneous as a matter of law; the exemption thus being invalid, the environmental assessment of §343-5 was applicable. 115 H. 299, 167 P.3d 292.

Where nothing in §607-25 indicated that §607-25 should provide the exclusive means for awarding attorney's fees and costs against a party for a violation of this chapter, §607-25 was not the exclusive means for awarding attorney's fees and costs for violations of this chapter. 120 H. 181, 202 P.3d 1226.

There is nothing in this chapter to indicate that an archeological inventory survey is a "necessary study" for the completion of an environmental impact statement. 128 H. 53, 283 P.3d 60 (2012).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-.htm

§343-1 Findings and purpose.

The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.

[L 1979, c 197, §1(1); am L 1983, c 140, §4]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0001.htm

§343-2

Definitions.

As used in this chapter unless the context otherwise requires:

"Acceptance" means a formal determination that the document required to be filed pursuant to section 343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.

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

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

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

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

"Council" means the environmental council.

"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.

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

"Environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"Finding of no significant impact" means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement.

"Helicopter facility" means any area of land or water which is used, or intended for use for the landing or takeoff of helicopters; and any appurtenant areas which are used, or intended for use for helicopter related activities or rights-of-way.

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Continued

"Office" means the office of environmental quality control.

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

"Power-generating facility" means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

"Significant effect" 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 as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

"Wastewater treatment unit" means any plant or facility used in the treatment of wastewater.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(2); am L 1983, c 140, §5; am L 1986, c 186, §1; am L 1987, c 187, §1 and c 325, §2; am L 1996, c 61, §1; am L 2000, c 50, §2; am L 2004, c 55, §2; am L 2005, c 130, §2; am L 2008, c 207, §3]

Attorney General Opinions

"Action" includes a subdivision proposal. Att. Gen. Op. 75-14.

"Action" includes issuance of building permits. Att. Gen. Op. 75-15.

Law Journals and Reviews

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

Case Notes

Sufficiency of an environmental impact statement. 59 H. 156, 577 P.2d 1116.

Sufficiency of an EIS is a question of law. 81 H. 171, 914 P.2d 1364.

The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of §343-5(c) is whether the proposed action will "likely" have a significant effect on the environment; as defined in this section, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

Where record in the case showed no substantive change in the project, nor any evidence that the subdivision application proposed "any use within a shoreline area as defined in §205A-41", as required in §343-5(a)(3), thereby making the subdivision application an "action" under this section that required a supplemental EIS, once the environmental impact statement had been accepted, no other statement for the proposed project was required under §343-5(g). 120 H. 457 (App.), 209 P.3d 1271.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0002.htm

§343-3

Public records and notice.

- (a) All statements, environmental assessments, and other documents prepared under this chapter shall be made available for inspection by the public during established office hours.
- (b) The office shall inform the public of notices filed by agencies of the availability of environmental assessments for review and comments, of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or nonacceptance of statements.
- (c) The office shall inform the public of:
 - (1) A public comment process or public hearing if a federal agency provides for the public comment process or public hearing to process a habitat conservation plan, safe harbor agreement, or incidental take license pursuant to the federal Endangered Species Act;
 - (2) A proposed habitat conservation plan or proposed safe harbor agreement, and availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment;
 - (3) A proposed incidental take license as part of a habitat conservation plan or safe harbor agreement; and
 - (4) An application for the registration of land by accretion pursuant to section 501-33 or 669-1(e) for any land accreted along the ocean.
- (d) The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries.

[L 1974, c 246, pt of §1; ren L 1979, c 197, §1(3); am L 1983, c 140, §6; am L 1992, c 241, §1; am L 1997, c 380, §8; am L 1998, c 237, §7; am L 2003, c 73, §3]

Case Notes

Where there was no evidence that the city department of planning and permitting filed a notice with the office of environmental quality control pursuant to HAR §11-200-11.1 of its determination that a supplemental environmental impact statement was not required, there was no date from which to measure the thirty

day limitation prescribed by §343-7(b) and §343-7(b) was thus inapplicable; in addition, given the plain and unambiguous language of §343-7 and this section, coupled with the related administrative rules, actual knowledge cannot be substituted for the public notice requirement. 123 H. 150, 231 P.3d 423 (2010).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0003.htm

§343-4 REPEALED.

L 1983, c 140, §7.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0004.htm

§343-5 Applicability and requirements.

- (a) Except as otherwise provided, an environmental assessment shall be required for actions that:
- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that 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; provided further that an environmental assessment for proposed uses under section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to section 205-5(b);
 - (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
 - (3) Propose any use within a shoreline area as defined in section 205A-41;
 - (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
 - (5) Propose 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";
 - (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
 - (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;

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- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
 - (B) A shoreline area as defined in section 205A-41; or
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
 - (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.
- (b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for the action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may choose not to prepare an environmental assessment and instead shall prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules.
- (c) For environmental assessments for which a finding of no significant impact is anticipated:
 - (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

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Continued

- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;
- (3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;
- (4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and
- (5) The agency shall file notice of the determination with the office. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

- (d) The final authority to accept a final statement shall rest with:
 - (1) The governor, or the governor's 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 the categories in subsection (a); or
 - (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

- (e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and

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agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and
- (3) The applicant shall respond in writing to comments received during the review and the applicant shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

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Continued

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of the determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

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. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.

- (f) Whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of determining whether an environmental assessment is required, the office, after consultation with and assistance from the affected state or county agencies, shall determine which agency has the responsibility for determining whether an environmental assessment by the applicant is required, except in situations involving secondary actions under section 343-5.5; provided that in no case shall the office be considered the approving agency.
- (g) In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The council, by rule, shall establish criteria and procedures for the use of previous determinations and statements.
- (h) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such 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

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Continued

has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

- (i) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter, and no other statement for the proposed action shall be required.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(5), (6); am L 1980, c 22, §1; am L 1983, c 140, §8; gen ch 1985; am L 1987, c 187, §2, c 195, §1, c 283, §23, and c 325, §1; am L 1992, c 241, §2; am L 1996, c 61, §2; am L 2004, c 55, §3; am L 2005, c 130, §3; am L 2006, c 250, §4; am L 2008, c 110, §2 and c 207, §5; am L 2009, c 11, §4; am L 2012, c 172, §2 and c 312, §2]

Attorney General Opinions

Amendments to county development plans; when environmental assessments required. Att. Gen. Op. 85-30.

Applicable to housing developed under chapter 359G. Att. Gen. Op. 86-13.

Law Journals and Reviews

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

Case Notes

Law contemplates consideration of secondary and nonphysical aspects of proposal, including socio-economic consequences. 63 H. 453, 629 P.2d 1134.

Requirements not applicable to project pending when law took effect unless agency requested statement. 63 H. 453, 629 P.2d 1134.

Construction and use of home and underground utilities near Paiko Lagoon wildlife sanctuary. 64 H. 27, 636 P.2d 158.

Environmental assessment required before land use commission can reclassify conservation land to other uses. 65 H. 133, 648 P.2d 702.

Participation by plaintiffs at contested case hearing did not excuse preparation of environmental assessment. 86 H. 66, 947 P.2d 378.

For Hawaiian home lands, the department of Hawaiian home lands is the accepting authority for applicant proposals under subsection (c); because the governor is not involved, there is no conflict with Hawaiian homes commission act. 87 H. 91, 952 P.2d 379.

"State lands" in subsection (a)(1) includes Hawaiian home lands. 87 H. 91, 952 P.2d 379.

In order to achieve the salutary objectives of the Hawaii environmental policy act, and because developer's proposed underpasses had been, from the start, an

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Continued

integral part of the project, developer's proposed construction of two underpasses under highway constituted "use of state lands" within the meaning of subsection (a)(1). 91 H. 94, 979 P.2d 1120.

The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of subsection (c) is whether the proposed action will "likely" have a significant effect on the environment; as defined in §343-2, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

Where department of Hawaiian home lands lease was executed in contravention of subsection (c) inasmuch as the condition precedent--acceptance of a required final environmental impact statement--was not satisfied, the lease was void. 106 H. 270, 103 P.3d 939.

Where all three elements under subsection (c) were present: (1) an applicant proposed an action specified by subsection (a), (2) the action required the approval of an agency, and (3) the action was not exempt under §343-6, the land use commission, as the agency that received the request for approval of the boundary amendment petition, was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098.

Where the record showed that the department of transportation did not consider whether its facilitation of the Hawaii superferry project would probably have minimal or no significant impacts, both primary and secondary, on the environment, its determination that the improvements to Kahului harbor were exempt from the requirements of this chapter was erroneous as a matter of law; the exemption thus being invalid, the environmental assessment of this section was applicable. 115 H. 299, 167 P.3d 292.

Trial court did not err in determining that there was no "use" of state or county land under subsection (a)(1) where developer's detention basins and drainage line was merely connected and routed through the existing street drainage system and developer's sewage lines were connected to the county's existing sewage lines as neither line would require tunneling or construction beneath state or county lands. 119 H. 90, 194 P.3d 531.

While chapter 150A and the board's microorganism import rules may have vested the board with exclusive authority to approve marine biotechnology firm's proposal to import and grow genetically engineered algae at the State's research and technology park, as the demonstration project constituted an action that proposed the use of state land, this section plainly and unambiguously required the preparation of an EA before the board could approve firm's application. 118 H. 247 (App.), 188 P.3d 761.

Where record in the case showed no substantive change in the project, nor any evidence that the subdivision application proposed "any use within a shoreline area as defined in §205A-41", as required in subsection (a)(3), thereby making the subdivision application an "action" under §343-2 that required a

supplemental environmental impact statement, once the environmental impact statement had been accepted, no other statement for the proposed project was required under subsection (g). 120 H. 457 (App.), 209 P.3d 1271.

Where there were genuine issues of material fact regarding whether the church building project site was included in the National and Hawaii (historic) registers, thus triggering the requirement for an environmental assessment under this section, the circuit court erred in granting summary judgment by finding that only the church structure itself, and not the church building project site, was included in the National and Hawaii registers. 128 H. 455 (App.), 290 P.3d 525 (2012).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0005.htm

§343-5.5 Exception to applicability of chapter.

- (a) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.
- (b) As used in this section:
- "Discretionary consent" means:
- (1) An action as defined in section 343-2; or
 - (2) An approval from a decision-making authority in an agency, which approval is subject to a public hearing.

"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"Primary action" means an action outside of the highway or public right-of-way that is on private property.

"Secondary action" means an action involving infrastructure within the highway or public right-of-way.

[L 2012, c 312, §1]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0005_0005.htm

§343-6

Rules.

- (a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules that shall:
- (1) Prescribe the procedures whereby a group of proposed actions may be treated by a single environmental assessment or statement;
 - (2) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment;
 - (3) Prescribe procedures for the preparation of an environmental assessment;
 - (4) Prescribe the contents of an environmental assessment;
 - (5) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft environmental impact statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final environmental statement;
 - (6) Prescribe the contents of an environmental impact statement;
 - (7) Prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an environmental impact statement;
 - (8) Establish criteria to determine whether an environmental impact statement is acceptable or not; and
 - (9) Prescribe procedures to appeal the nonacceptance of an environmental impact statement to the environmental council.
- (b) At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of any rule.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(7); am L 1983, c 140, §9; am L 1986, c 186, §2; am L 1987, c 187, §3; am L 2008, c 110, §3]

Law Journals and Reviews

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

Case Notes

Project requiring completely new drainage system serving over 300 residences was qualitatively incompatible with both letter and intent of administrative rules implementing subsection (a)(7) which intended to exempt only very minor projects from requirements of this chapter. 86 H. 66, 947 P.2d 378.

Where all three elements under §343-5(c) were present: (1) an applicant proposed an action specified by §343-5(a), (2) the action required the approval of an agency, and (3) the action was not exempt under this section, the land use commission, as the agency that received the request for approval of the boundary amendment petition, was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098.

The environmental council is expressly granted the power to promulgate rules regarding environmental impact statements, and it clearly contemplates the possibility of changes to an original project that may dictate the need for a supplemental environmental impact statement (SEIS); the rules promulgated to address SEISs, including HAR §§11-200-26 and 11-200-27, were within the implied powers reasonably necessary to carry out the powers expressly granted; as the SEIS process was consistent with the Hawaii environmental protection act, the council did not exceed its authority in promulgating rules to guide the SEIS process, including HAR §§11-200-26 and 11-200-27. 123 H. 150, 231 P.3d 423 (2010).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0006.htm

§343-6.5 Waiahole water system; exemption.

The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343.

[L 1998, c 111, §4]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0006_0005.htm

§343-7 Limitation of actions.

- (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed action is started. The council or office, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by environmental court action, may be adjudged aggrieved.
- (b) Any judicial proceeding, the subject of which is the determination that a statement is required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a statement is not required for a proposed action, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The council or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial

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Continued

action under this subsection. Others, by environmental court action, may be adjudged aggrieved.

- (c) Any judicial proceeding, the subject of which is the acceptance of an environmental impact statement required under section 343-5, shall be initiated within sixty days after the public has been informed pursuant to section 343-3 of the acceptance of such statement. The council shall be adjudged an aggrieved party for the purpose of bringing judicial action under this subsection. Affected agencies and persons who provided written comment to such statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that the contestable issues shall be limited to issues identified and discussed in the written comment.

[L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(8); am L 1983, c 140, §10; am L 1992, c 241, §3; am L 2014, c 218, §8]

Law Journals and Reviews

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

Case Notes

Plaintiff's claims that Hawai'i environmental policy act was violated were barred; plaintiff did not submit comment and filed suit more than sixty days after office of environmental quality control informed the public that the state final environmental impact statement had been accepted. 307 F. Supp. 2d 1149.

Court has no jurisdiction over actions initiated after time limit. 64 H. 126, 637 P.2d 776.

Date of commission's decision to grant SMA permit triggered time period for appeal, not date when commission made express determination that no environmental assessment was required for project; plaintiff's challenge to lack of environmental assessment thus timely. 86 H. 66, 947 P.2d 378.

Where the federal construct of a procedural right was not germane to case because this section, the statute at issue, establishes who and under what circumstances the lack of an environmental assessment, may be challenged, and federal cases recognizing this standard were inapposite because they rested on non-analogous statutes, petitioner could not be afforded so-called "procedural standing" under subsection (a). 100 H. 242, 59 P.3d 877.

Where Hawaiian homes commission did not accept the proposal for an environmental impact statement, the subject of the judicial proceeding before the trial court was not the "acceptance" of such statement; intervenors were not required to provide written comments pursuant to subsection (c) as subsection (c) did not apply; intervenor's objections, therefore, were subject to judicial review under subsection (b). 106 H. 270, 103 P.3d 939.

Appellants established standing where they showed threatened injuries under the traditional injury-in-fact test and procedural injuries based on a procedural right test; the threatened injury in fact was due to defendant's decision to go forward with harbor improvements and allow the superferry project to operate at Kahului

harbor without conducting an environmental assessment; the procedural injury was based on various interests appellants identified that were threatened due to the violation of their procedural rights under this chapter. 115 H. 299, 167 P.3d 292.

Where this section waived the State's sovereign immunity against actions brought to challenge: (1) the lack of an environmental assessment; (2) the determination that an environmental impact statement is or is not required; and (3) the acceptance of an environmental impact statement, sovereign immunity did not prevent the application of the private attorney general doctrine against the State and the circuit court did not err in relying on the doctrine as a basis for its award of attorney's fees against the State and superferry jointly. 120 H. 181, 202 P.3d 1226.

Although the subdivision application was part of the larger action (i.e., the project), the specific "action" for statute of limitations purposes was the date the subdivision application was approved, as opposed to when the project itself was originally approved; thus, where plaintiffs' initial complaint was filed within 120 days of the department of planning and permitting's approval of the subdivision application, plaintiffs' claims were not barred by this section. 123 H. 150, 231 P.3d 423 (2010).

Where there was no evidence that the city department of planning and permitting filed a notice with the office of environmental quality control pursuant to HAR §11-200-11.1 of its determination that a supplemental environmental impact statement was not required, there was no date from which to measure the thirty day limitation prescribed by subsection (b) and subsection (b) was thus inapplicable; in addition, given the plain and unambiguous language of this section and §343-3, coupled with the related administrative rules, actual knowledge cannot be substituted for the public notice requirement. 123 H. 150, 231 P.3d 423 (2010).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0007.htm

§343-8

Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such 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.

[L 1974, c 246, pt of §1; ren L 1979, c 197, §1(9)]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-0008.htm

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HRS CHAPTER 344 STATE ENVIRONMENTAL POLICY

Sections

- §344-1 Purpose
- §344-2 Definitions
- §344-3 Environmental policy
- §344-4 Guidelines

Note

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2017 or until completion. L 2012, c 218.

Cross References

Development of environmental goals and objectives by department of health, see §321-1.1.

Law Journals and Reviews

A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared under the Hawaii Environmental Policy Act. 18 UH L. Rev. 719.

Determining the Expiration Date of an Environmental Impact Statement: When to Supplement a Stale EIS in Hawai'i. 35 UH L. Rev. 249 (2013).

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-.htm

§344-1 Purpose.

The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii.

[L 1974, c 247, pt of §1; gen ch 1993]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0001.htm

§344-2 Definitions.

As used in this chapter unless the context otherwise requires:

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

"Environment" means the complex of physical and biological conditions that influence human well-being, including land, air, water, minerals, flora, fauna, energy, noise, and places of historic or aesthetic significance.

[L 1974, c 247, pt of §1]

Revision Note

Numeric designations deleted.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0002.htm

§344-3 Environmental policy.

It shall be the policy of the State, through its programs, authorities, and resources to:

- (1) Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State's unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawaii.
- (2) Enhance the quality of life by:
 - (A) Setting population limits so that the interaction between the natural and artificial environments and the population is mutually beneficial;
 - (B) Creating opportunities for the residents of Hawaii to improve their quality of life through diverse economic activities which are stable and in balance with the physical and social environments;
 - (C) Establishing communities which provide a sense of identity, wise use of land, efficient transportation, and aesthetic and social satisfaction in harmony with the natural environment which is uniquely Hawaiian; and
 - (D) Establishing a commitment on the part of each person to protect and enhance Hawaii's environment and reduce the drain on nonrenewable resources.

[L 1974, c 247, pt of §1; gen ch 1993]

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0003.htm

§344-4

Guidelines.

In pursuance of the state policy to conserve the natural resources and enhance the quality of life, all agencies, in the development of programs, shall, insofar as practicable, consider the following guidelines:

- (1) Population.
 - (A) Recognize population impact as a major factor in environmental degradation and adopt guidelines to alleviate this impact and minimize future degradation;
 - (B) Recognize optimum population levels for counties and districts within the State, keeping in mind that these will change with technology and circumstance, and adopt guidelines to limit population to the levels determined.
- (2) Land, water, mineral, visual, air, and other natural resources.
 - (A) Encourage management practices which conserve and fully utilize all natural resources;
 - (B) Promote irrigation and waste water management practices which conserve and fully utilize vital water resources;
 - (C) Promote the recycling of waste water;
 - (D) Encourage management practices which conserve and protect watersheds and water sources, forest, and open space areas;
 - (E) Establish and maintain natural area preserves, wildlife preserves, forest reserves, marine preserves, and unique ecological preserves;
 - (F) Maintain an integrated system of state land use planning which coordinates the state and county general plans;
 - (G) Promote the optimal use of solid wastes through programs of waste prevention, energy resource recovery, and recycling so that all our wastes become utilized.
- (3) Flora and fauna.
 - (A) Protect endangered species of indigenous plants and animals and introduce new plants or animals only upon assurance of negligible ecological hazard;
 - (B) Foster the planting of native as well as other trees, shrubs, and flowering plants compatible to the enhancement of our environment.

§344-4
Continued

- (4) Parks, recreation, and open space.
 - (A) Establish, preserve and maintain scenic, historic, cultural, park and recreation areas, including the shorelines, for public recreational, educational, and scientific uses;
 - (B) Protect the shorelines of the State from encroachment of artificial improvements, structures, and activities;
 - (C) Promote open space in view of its natural beauty not only as a natural resource but as an ennobling, living environment for its people.
- (5) Economic development.
 - (A) Encourage industries in Hawaii which would be in harmony with our environment;
 - (B) Promote and foster the agricultural industry of the State; and preserve and conserve productive agricultural lands;
 - (C) Encourage federal activities in Hawaii to protect the environment;
 - (D) Encourage all industries including the fishing, aquaculture, oceanography, recreation, and forest products industries to protect the environment;
 - (E) Establish visitor destination areas with planning controls which shall include but not be limited to the number of rooms;
 - (F) Promote and foster the aquaculture industry of the State; and preserve and conserve productive aquacultural lands.
- (6) Transportation.
 - (A) Encourage transportation systems in harmony with the lifestyle of the people and environment of the State;
 - (B) Adopt guidelines to alleviate environmental degradation caused by motor vehicles;
 - (C) Encourage public and private vehicles and transportation systems to conserve energy, reduce pollution emission, including noise, and provide safe and convenient accommodations for their users.
- (7) Energy.
 - (A) Encourage the efficient use of energy resources.

§344-4
Continued

- (8) Community life and housing.
 - (A) Foster lifestyles compatible with the environment; preserve the variety of lifestyles traditional to Hawaii through the design and maintenance of neighborhoods which reflect the culture and mores of the community;
 - (B) Develop communities which provide a sense of identity and social satisfaction in harmony with the environment and provide internal opportunities for shopping, employment, education, and recreation;
 - (C) Encourage the reduction of environmental pollution which may degrade a community;
 - (D) Foster safe, sanitary, and decent homes;
 - (E) Recognize community appearances as major economic and aesthetic assets of the counties and the State; encourage green belts, plantings, and landscape plans and designs in urban areas; and preserve and promote mountain-to-ocean vistas.
- (9) Education and culture.
 - (A) Foster culture and the arts and promote their linkage to the enhancement of the environment;
 - (B) Encourage both formal and informal environmental education to all age groups.
- (10) Citizen participation.
 - (A) Encourage all individuals in the State to adopt a moral ethic to respect the natural environment; to reduce waste and excessive consumption; and to fulfill the responsibility as trustees of the environment for the present and succeeding generations; and
 - (B) Provide for expanding citizen participation in the decision making process so it continually embraces more citizens and more issues.

[L 1974, c 247, pt of §1; am L 1976, c 27, §2; am L 1985, c 76, §1; gen ch 1993]

Case Notes

No mandate to adopt guidelines prior to making decisions on programs. 63 H. 453, 629 P.2d 1134.

http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/HRS_0344-0004.htm

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HAR CHAPTER 11-200 ENVIRONMENTAL IMPACT STATEMENT RULES

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.

"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.

§11-200-2
Continued

"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 (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.

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Continued

"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.

"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
 - (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 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)

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 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;

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Continued

- (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 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:
 - (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;

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

Note

In 2007, the Environmental Council formally amended HAR Section 11-200-8 to add the eleventh exemption category for affordable housing.

The Environmental Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. As such, OEQC's prior unofficial versions of HAR Chapter 11-200 did not include the eleventh exemption category. Instead, OEQC maintained a standalone unofficial version of the amended HAR Section 11-200-8. This version of the unofficial compilation provides the amended HAR Section 11-200-8 in the context of the 1996 amended and compiled HAR Chapter 11-200 in order to have one document.

Subchapter 6 Determination of Significance

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

- (a) For agency actions, except those actions exempt from the preparation of an environmental assessment pursuant to section 343-5, HRS, or section 11-200-8, the proposing agency shall:
 - (1) Seek, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals which 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;

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Continued

- (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 agency reasonably believes to be affected;
- (7) 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

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Continued

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 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;

- (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 & Response Requirements for Draft Environmental Assessments for Anticipated Negative Declaration Determinations & 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 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 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 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 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;

§11-200-12

Continued

- (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)

Note

Act 50, Session Laws of Hawai'i 2000 requires the consideration of effects on cultural practices when making a determination of significance effects.

[Act 50, Session Laws of Hawai'i 2000](#), amended the definition of “significant effect” in HRS Section 343-2 to mean “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 as established by law, or adversely affect the economic [or] welfare, social welfare[.], or cultural practices of the community and State.”

Act 50 also amended the definition of “environmental impact statement” or “statement” in HRS Section 343-2 to include the disclosure of effects of a proposed action on cultural practices, as follows:

“environmental impact statement” or “statement” means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

OEQC's past unofficial versions of HAR Chapter 11-200 included within HAR Section 11-200-12(b)(4) the statutory language from Act 50, as follows: "substantially affects the economic welfare, social welfare, and cultural practices of the community or State." However, the Environmental Council never promulgated an amendment to HAR Section 11-200-12(b)(4) to incorporate the language from Act 50. As such, OEQC's prior unofficial versions of HAR Section 11-200-12(b)(4) were not consistent with the official version of HAR Chapter 11-200. This version of the unofficial compilation provides the exact language as promulgated in the official version of HAR Chapter 11-200. However, per Act 50, cultural practices are an integral component of the significance criteria and must be considered in making a significance determination.

§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 & 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 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 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.

§11-200-17 (d)
Continued

- (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 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.

§11-200-17 (g)
Continued

- 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 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 land use, water, and public

§11-200-17

Continued

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 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 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:
- (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

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- (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 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 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 they relate to the changes.

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

Note

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

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.

Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It has not been compiled.

HAR CHAPTER 11-201 ENVIRONMENTAL COUNCIL RULES OF PRACTICE AND PROCEDURE

Last updated 1985

<http://health.hawaii.gov/opppd/files/2015/06/11-201.pdf>

Subchapter 1 Purpose

§11-201-1 Purpose

This chapter governs procedures before the environmental council of the State of Hawaii under chapter 343, Hawaii Revised Statutes, and other-related acts as may now or hereafter be administered by the council. They shall be construed to effectuate the purposes of chapter 343, Hawaii Revised Statutes, and to secure the just and speedy determination of every proceeding.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

Subchapter 2 Definition

§11-201-2 Definitions

As used in this chapter, unless the context otherwise specifically requires:

"Appellant" means an applicant who appeals the non-acceptance by an agency of that person's environmental impact statement.

"Council" means the environmental council of the State of Hawaii. Its membership shall be as provided in section 341-3, Hawaii Revised Statutes.

"Director" means the director of environmental quality control.

"Office" means the office of environmental quality control.

"Party" means each person or agency specifically affected by a proceeding other than as a member of the general public. The attorney general or the attorney general's representative shall be designated as "counsel for the council" and shall be party to all proceedings governed by this chapter.

"Petitioner" means the person or agency on whose behalf a petition is made to the council for a declaratory ruling or for the adoption, amendment, or repeal of any rule of the council.

"Proceeding" means the council's elucidation and consideration of the relevant facts and applicable laws and its action thereupon with respect to a particular subject within its jurisdiction, initiated by a filing or submittal by petition,

appeals, and applications by an interested person or agency or by a council notice or order, and shall include, but not be limited to:

- (1) Proceedings involving the adoption, amendment, or repeal of any rule of the council;
- (2) Proceedings involving declaratory rulings; and
- (3) Appeals instituted at the request of an applicant, involving the non-acceptance of the applicant's environmental impact statement by the agency responsible for accepting that statement.

"Respondent" means an agency whose determination is subject to an appeal filed with the council.

[Eff 12/6/85] (Auth: HRS §343-6) (Imp: HRS §343-6)

Subchapter 3 Environmental Council

§11-201-3 Environmental Council

- (a) The office of the environmental council shall be located at such place and address as the council shall from time to time designate. All communications to the council shall be addressed to the environmental council, unless otherwise specifically directed.
- (b) The office of the council shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order.
- (c) The council may meet and exercise its powers in any part of the State of Hawaii. All meetings of the council shall be open to the public, except that the council may meet in executive meetings, from which the public may be excluded, by a recorded vote of not less than two-thirds of the members present. An executive meeting shall be authorized only when, in accordance with law, it is deemed necessary for the protection of the character or reputation of any person or the protection of secret processes or methods of manufacture of any person or when the attorney general determines it is necessary for the preparation of the prosecution or defense of any action or proceeding. No order, ruling, appointment, contract, or decision shall be finally acted upon at an executive meeting. Meetings shall be held at times as the council deems advisable. Meetings may be scheduled by consensus of the council during the course of a meeting or during intervening days, at the call of the council chairperson or the director upon notifying the council chairperson. The public, petitioners, appellants, and respondents shall receive reasonable notice of all meetings. Notice of meetings of the council shall:

- (1) Be sent to all requesting to be on the mailing list for this purpose and other interested parties;
 - (2) Be posted in the office of the environmental council; and
 - (3) Be distributed to the news media, if possible.
- (d) A majority of all members to which the council is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the council is entitled shall be necessary to make valid any action of the council except those actions that the council authorizes, by concurrence of a majority of all members to which it is entitled, to be performed in its behalf by a limited number of duly designated council members, in which case the concurrence of a majority of all the council members so designated shall be necessary to make an action valid.
- (e) The council shall maintain minutes of its meetings, setting forth an accurate record of votes and actions taken at the meetings. Unless otherwise required by the governor, the minutes need not include a verbatim record of discussions at meetings. The minutes of the council shall be deemed public records, provided that the minutes of any executive meeting from which the public has been excluded may remain confidential, as long as their publication would defeat the lawful purpose as stated in subsection (c), but no longer.
- (f) All decisions, orders, and other actions of the council shall be authenticated or signed by the council members acting in the proceeding or by the chairperson upon delegation by the council members acting in the proceeding. Official copies of decisions, orders, and other council actions may be issued under the signature of the chairperson of the council or the chairperson's delegate.
- (g) All documents required to be filed with the council shall be filed in the office of the council at Honolulu, Hawaii, within time limits as prescribed by law, rules, or by order of the council. Requests for public information, copies of official documents, or opportunity to inspect public records may be made in writing to the council office or in person at the office.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 92-4, 92-5, 92-7, 92-9, 343-3, 343-6)

§11-201-4 Delegation of Administrative Duties

- (a) The council may delegate to any individual the power or authority vested in the council as it deems reasonable and proper for the effective administration of chapter 343, Hawaii Revised Statutes, except the power to adopt, amend, or repeal rules.

- (b) The council by written resolution adopted by a majority of the members to which it is entitled, may appoint a hearing officer or officers, who may, but need not be, members of the council, or a disinterested attorney at law or other person or a combination of any of them to hold a hearing as provided in this chapter and take testimony upon the matters involved in the hearing and transmit to the council a record of the hearing, including a recording or transcript and a summary of the evidence taken at the hearing. After review of the testimony and evidence, a majority of the members to which the council is entitled shall render a decision on the matter.
- (c) Any hearing officer may be paid a reasonable compensation as shall be determined by the council, provided that no member of the council shall be eligible to receive any compensation.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

Subchapter 4 Public Records

§11-201-5 Public Records

- (a) The term "public records" as used in this chapter is defined as in section 92-50, Hawaii Revised Statutes, and shall include all maps, rules, environmental impact statements and related documents, written statements of policy or interpretation formulated, adopted, or used by the council all final opinions and orders, the minutes of meeting of the council, and any other material on file in the office of the council, which shall include all statements and other documents prepared under the provisions of chapter 343, Hawaii Revised Statutes, except materials and minutes submitted and reported in executive meetings of the council.
- (b) All public records shall be available for inspection in the office of the council at Honolulu, Hawaii, during established office hours unless public inspection of those records is in violation of any state or federal law.
- (c) Public records printed or reproduced by the council shall be given to any person requesting them and paying the reasonable cost thereof.
- (d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled expeditiously.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6, 92-50)

Subchapter 5 Proceedings Before Council or Hearing Officer

§11-201-6 Proceedings Before Council or Hearing Officer

- (a) The council on its own motion, or upon the petition of any interested person or any agency of the federal, state, or county government, may hold such proceedings as it may deem necessary from time to time in the performance of its duties, or the formulation of its rules. Procedures to be followed by the council, unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, shall be as in the opinion of the council will best serve the purposes of the proceeding.
- (b) An individual may appear in the individual's own behalf or as an authorized representative of a partnership, corporation, trust or association, and an officer or employee of an agency of the state or a political subdivision of the state may represent the agency in any proceeding before the council.
- (c) A person or agency may be represented by or with any person, counsel, or consultant in any proceeding under this chapter, except as provided in subsection (e).
- (d) When an individual acting in a representative capacity appears in person or signs a paper in practice before the council, that individual's personal appearance or signature shall constitute a representation to the council that under this chapter and the applicable statute, that individual is authorized and qualified to represent the particular person on whose behalf the individual acts. The council at any time may require any person transacting business with the council in a representative capacity to show in writing that person's authority and a qualification to act in that capacity.
- (e) Bar to appearance.
 - (1) No individual, whether associated with the council as a member, officer, employee, or counsel shall be permitted to appear before the council on behalf of or to represent in any manner any party in connection with any proceeding or matter that the individual has handled or passed upon while associated in any capacity with the council after June 2, 1975;
 - (2) Any person or agency appearing before the council in any proceeding or matter shall not in relation thereto knowingly accept assistance from and compensate any individual who would be precluded by paragraph (1);
 - (3) No individual who has been associated with the council as a member, officer, employee, or counsel thereof, shall be permitted to appear before the council in behalf of, or to represent in any manner, any person or agency in connection with any proceeding

or matter that was pending before the council at the time of the individual's association with the council unless that individual shall first have obtained the written consent of the council upon a verified showing that the individual did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during that individual's association with the council;

- (4) This subsection shall not apply to any individual or agency whose association with the council has been terminated for a period of one year.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§84-18, 343-6)

§11-201-7 Disqualification of Council Member or Hearing Officer

Any party to a hearing, up to five days before the proceeding, may file an affidavit that one or more of the council members or a hearing officer has a personal bias or prejudice. The council member against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the council. If the council member or hearing officer chooses to answer the affidavit, the remaining council members shall decide by a majority of all the members to which the council is entitled whether that council member or hearing officer shall be disqualified from the proceeding. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within the time. Any council member or hearing officer may request disqualification by filing with the chairperson a certificate that deems that person unable for any reason to preside with impartiality in the pending hearing.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-8 Consolidations

The council, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-9 Filing of Documents

- (a) All requests, appeals, pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the council in any proceeding shall be filed at the office of the council at Honolulu, Hawaii, within the time limits prescribed by law, this chapter, or by order of the council. The date on which the papers are received shall be regarded as the date of filing.
- (b) All requests and appeals filed with the council shall be written in black ink, typewritten, mimeographed, or printed; shall be plainly legible; and shall be on strong, durable paper not larger than 8-1/2" X 14" in size, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.
- (c) All documents shall be signed in indelible ink by the party signing or by a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement contained therein is true, and no such statement is misleading; and that it is not interposed for delay.
- (d) Unless otherwise specifically provided by a particular rule or order of the council, an original and fifteen copies of all papers shall be filed.
- (e) All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, mailing address, and business telephone number, if any, of the individual or individuals who may be served with any documents filed in the proceeding.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-10 Amendment of Documents and Dismissal

If any document filed in a proceeding is not in substantial conformity with the applicable rules of the council as to contents thereof, or is otherwise insufficient, the council, on its own motion or on motion of any party, may strike the document or require its amendment. If amended, the document shall be effective as of the date of the receipt of the amendment.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-11 Retention of Documents

All documents filed with or presented to the council shall be retained in the files of the council. The council may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-12 Service of Process

- (a) The council shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.
- (b) All papers served by either the council or any party shall be served upon all parties or their counsel. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel of the fact.
- (c) The final order, and any other paper required to be served by the council upon a party, shall be served upon the party and a copy shall be furnished to counsel of record.
- (d) Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail.
- (e) Service upon parties, other than the council, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped and properly addressed to the parties involved.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-13 Council Decision

All final orders, opinions, or rulings entered by the council in the proceeding and rules adopted by the council shall be served upon the parties participating in the proceeding by regular mail or personal delivery by the council and shall be released for general publication. Copies of the published material shall be available for public inspection in the office of the council or may be obtained upon request and upon payment of reasonable charges.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-14 Computation of Time

In computing any period of time prescribed or allowed by this chapter, order of the council, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Sunday or legal holiday in the State of Hawaii.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

§11-201-15 Continuance or Extensions of Time

Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by this chapter, the council, upon motion and the concurrence of a majority of all the members to which the council is entitled, may permit the act to be done after expiration of the specified period if the delinquency is clearly shown to have been the result of excusable neglect and the council will still have enough time to comply with applicable statutory time limits.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

Subchapter 6 Rulemaking

§11-201-16 Initiation of Rulemaking Proceedings

- (a) The council, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the council. Procedures to be followed in rulemaking proceedings shall be set forth in this chapter and applicable law.
- (b) Any interested person or agency may petition the council for the adoption, amendment, or repeal of any rule of the council. Petitions for rulemaking filed with the council shall become matters of public record.
- (c) Petitions for rulemaking shall conform to section 11-201-9 and shall contain:
 - (1) The name, address, and telephone number of each petitioner;
 - (2) The signature of each petitioner;
 - (3) A draft or the substance of the proposed adoption or amendment or a designation of the provisions the repeal of which is desired;
 - (4) A statement of the petitioner's interest in the subject matter; and
 - (5) A statement of the reasons in support of the proposed adoption, amendment, or repeal.

- (d) The council, within thirty days after the filing of a petition for rulemaking, shall either deny the petition or initiate public rulemaking proceedings in accordance with chapter 91, Hawaii Revised Statutes.
- (e) Any petition that fails in any material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the council. The council shall notify the petitioner in writing of the denial, stating the reasons therefore. Denial of a petition shall not operate to prevent the council from acting, on its own motion, on any matter disclosed in the petition. The petitioner may seek a review of the denial through the circuit court pursuant to chapter 91, Hawaii Revised Statutes.
- (f) If the council determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 11-201-17 to 11-201-19 and applicable law.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-6, 343-6) (Imp: HRS §§91-2, 91-6, 343-6)

§11-201-17 Notice of Public Hearing

- (a) When, pursuant to a petition therefor or upon its own motion, the council proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and at least once in a newspaper which is printed and issued at least twice a week in the county affected by the proposed action. The notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the council's rulemaking proceedings. All notices shall be published at least twenty days prior to the date set for public hearing.
- (b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:
 - (1) A statement of the date, time, and place where the public hearing will be held;
 - (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
 - (3) A statement of the substance of the proposed rulemaking.

[Eff 12/6/85] Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 92-41, 343-6)

§11-201-18 Conduct of Hearing

- (a) The public hearing for the adoption, amendment, or repeal of rules shall be heard before the council and presided over by the chairperson of the council, or, in the chairperson's absence by another member designated by the council. The hearing shall be conducted in a manner as to afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.
- (b) Each hearing shall be held at the time and place set in the notice of hearing but at the time and place may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.
- (c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in the order as the presiding officer shall prescribe.
- (d) Each witness, before proceeding to testify, shall state the witness' name, address, and whom the witness represents at the hearing, and shall give the information respecting the appearance of the witness as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the council or by any other representative of the council. Cross-examination by persons or agencies shall be permitted only at the discretion of the presiding officer.
- (e) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and fifteen copies of written comments, recommendations, or replies shall be submitted.
- (f) Unless otherwise specifically ordered by the council, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, sixteen copies of the exhibits shall be submitted.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

§11-201-19 Council Action

The council shall consider all relevant comments and materials of record before taking final action in a rulemaking proceeding. Final action should be taken within twenty working days after:

- (1) The final public hearing; or
- (2) The expiration of any extension period for submission of written comments or recommendations.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

§11-201-20 Emergency Rulemaking

The council may adopt emergency rules pursuant to section 91-3, Hawaii Revised Statutes.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

Subchapter 7 Declaratory Rulings

§11-201-21 Petitions for Declaratory Rulings

- (a) On petition of an interested person or agency, the council may issue a declaratory order as to the applicability of any statutory provision or any rule or order of the council and may also make determinations under chapter 343, Hawaii Revised Statutes. The petition shall conform to the requirements of section 11-201-9 and shall contain:
 - (1) The name, address, and telephone number of each petitioner;
 - (2) The signature of each petitioner;
 - (3) A designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
 - (4) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
 - (5) A statement of the petitioner's position or contention; and
 - (6) A memorandum of authorities, containing a full discussion of reasons and legal authorities, in support of the position or contention.
- (b) The council shall inform the public regarding petitions for declaratory rulings in the office's periodic bulletin. Within thirty days after the submission of a petition for declaratory ruling, the council shall either deny the petition in writing, stating the reasons for the denial, or issue a

declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 11-201-23, provided that if the matter is set for hearing, the council shall render its findings and decision within fifteen days after the close of the hearing. Any determination by the council regarding the petition for declaratory ruling shall be published in the office's periodic bulletin.

- (c) The council, without notice or hearing, may dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this section.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

§11-201-22 Refusal to Issue a Declaratory Order

The council, for good cause, may refuse to issue a declaratory order with specific reasons for the determination. Without limiting the generality of the foregoing, the council may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if judicial relief is sought;
- (3) The issuance of the declaratory order may affect the interests of the council in a litigation that is pending or may reasonably be expected to arise; and
- (4) The matter is not within the jurisdiction of the council.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

§11-201-23 Request for Hearing

Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing shall be granted to the petitioner or to a party in interest, the council may order the proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the request the reasons, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, why the matters alleged in the petition will not permit the fair and expeditious disposition of the petition. To the extent that the request for a hearing is dependent upon factual assertion, the request shall be accompanied by affidavits establishing these facts. In the event a hearing is ordered by the council, chapter 91, Hawaii Revised Statutes, shall govern the proceedings.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

§11-201-24 Applicability of Order

An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

§11-201-25 Declaratory Ruling on Council's Own Motion

Notwithstanding this chapter, the council, on its own motion or upon request but without notice or hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

Subchapter 8 Appeals

§11-201-26 Filing of Appeal

- (a) An appellant, within sixty calendar days after non-acceptance of the environmental impact statement by an agency, may file an appeal with the council against the agency, charging that the agency has improperly determined that the statement is not acceptable. A copy of the appeal with accompanying documents shall also be sent to the respondent.
- (b) A document filed by an appellant initiating an appeal to the council shall be accompanied by a nonrefundable fee of \$50 to partially cover publication and administrative costs.
- (c) The appeal shall conform to the requirements of section 11-201-9. The appeal shall contain:
 - (1) A list of the persons who are proposing the action;
 - (2) A copy of the environmental impact statement submitted by the appellant to the agency and a copy of the subsequent revised statement, if any;
 - (3) A copy of the comments and other communications received during the review of the statement that are pertinent to the issues involved in the complaint;
 - (4) A copy of the findings and reasons submitted by the agency to the appellant in support of its determination of non-acceptance; and
 - (5) A concise memorandum setting forth the facts and law in support of the appeal.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§343-5, 343-6)

§11-201-27 Filing of Response to Appeal

At least five working days before the date set for hearing on an appeal, the respondent shall file with the council a concise memorandum setting forth the facts and law in support of its determination to not accept the appellant's environmental impact statement.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§343-5, 343-6)

§11-201-28 Appeal Hearings; Generally

- (a) An appeal shall be conducted as a contested case under chapter 91, Hawaii Revised Statutes. The council, upon receipt of an appeal, shall order the matter set for hearing. A notice of hearing shall be served at least fifteen days before the hearing upon the appellant and the respondent agency.
- (b) Appeals shall be heard before the council or a hearing officer duly appointed by the council. A hearing officer shall be appointed at least fifteen days prior to the hearing and notice shall be given to all parties at that time.
- (c) When a proceeding is conducted before the council itself, the proceeding shall be presided over by the chairperson of the council or, in the chairperson's absence, by another member designated by the council.
- (d) The presiding officer at a proceeding shall have authority to:
 - (1) Control the course of the hearing;
 - (2) Hold conferences open to the public on which they have had notice, for the settlement or simplification of issues;
 - (3) Administer oaths and affirmations;
 - (4) Grant application for and issue subpoenas;
 - (5) Take or cause deposition to be taken;
 - (6) Rule upon offers of proof and receive relevant evidence;
 - (7) Limit lines of questioning or testimony that are irrelevant, immaterial, or repetitious;
 - (8) Rule upon all objections, procedural requests, and motions that do not involve final determination of proceedings;
 - (9) Dispose of any other matter that normally and properly arises in the course of the proceeding; and

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- (10) Take all other actions authorized by chapter 343, Hawaii Revised Statutes, rules, or by any other statute, that are deemed necessary to the orderly and just conduct of the hearing.
- (e) The hearing officer shall have the powers as are accorded to the presiding officer in the hearing of an appeal as provided in subsection (d). In the event that the hearing officer is absent or unable to act, the powers and duties to be performed under this chapter in connection with the proceeding, without abatement of the proceeding unless otherwise ordered by the council, may be assigned to another hearing officer duly appointed by the chairperson.
- (f) No hearing officer or council member shall be assigned to serve in any proceeding who:
- (1) Has any pecuniary interest in any matter or business involved in the proceeding;
 - (2) Is related within the first degree by blood or marriage to any party to the proceeding; or
 - (3) Has participated in an investigation preceding the institution of the proceeding or in a determination that it should be instituted or in the development of the evidence to be introduced therein. However, if a council member has participated in making a recommendation to an agency under section 343-5(c), Hawaii Revised Statutes, this shall not disqualify that council member.
- (g) Each hearing shall be held on the island where the dispute has arisen. Hearings shall be held, on the first day, at the time and place set forth in the notice of hearing, but may at that time and place be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof by the presiding officer or hearing officer at the hearing.
- (h) Hearings shall be open to the public.
- (i) The record of the hearing shall be compiled in conformance with section 91-9(e), Hawaii Revised Statutes. The council shall make provisions for stenographic record of the testimony, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. Any person desiring a copy of the record of a hearing or any part thereof shall be entitled to the same upon written application to the council and upon payment of reasonable costs thereof.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-9, 91-9.5, 343-5, 343-6)

§11-201-29 Appeal Hearings; Witnesses

- (a) Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing may be issued by the presiding officer or any designated member of the council or by the hearing officer. Application for subpoenas shall be made in writing to the council or hearing officer. The application shall specify the particular documents or data desired and shall show their relevancy to the issues involved. Application shall be made at least three days prior to the hearing. If application is made at a later time, the council may, in its discretion, issue subpoenas or continue the hearing or any part thereof. Enforcement of obedience to subpoenas issued by the presiding officer or any designated member of the council or by the hearing officer and served pursuant to this chapter shall be effected by written application of any member of the council to any circuit judge.
- (b) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and those fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for the depositions shall be paid by the party at whose request the depositions are taken.
- (c) Witnesses shall be placed under oath or affirmation prior to testifying.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: §§91-9, 343-5, 343-6)

§11-201-30 Appeal Hearings; Procedures

- (a) At the commencement of the hearing, the presiding officer or hearing officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. This procedure, unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, shall be such as in the opinion of the presiding officer or hearing officer shall best serve the purposes of the hearing without prejudice to any party.
- (b) All parties shall be given reasonable opportunity to offer testimony with respect to the matters relevant to the proceeding. Witnesses, before proceeding to testify, shall state their name, address, whom they represent at the hearing, and shall give the information respecting their appearance relevant to the proceeding as the presiding officer or hearing officer may request. The presiding officer or hearing officer shall confine the testimony to the matters for which the hearing has been called but need not apply the technical rules of evidence except as required by law. Each witness shall be subject to questioning by members of the council and by any representative of the council. Each witness shall also be subject to cross-examination by the adverse party. Each party shall have the right to submit rebuttal evidence and rebuttal arguments.

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- (c) The council or hearing officer shall take notice of judicially recognizable facts and may take notice of generally recognizable technical or scientific facts within the council's or hearing officer's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and are afforded the opportunity to contest the facts so noticed.
- (d) At the hearing, the presiding officer or hearing officer may require the production of further evidence upon any issue.
- (e) After all the evidence has been presented, the council or hearing officer shall give the parties opportunity to summarize. Within a reasonable time after the final arguments have been completed and all requested memoranda submitted, the council or hearing officer shall bring the matter to a close.
- (f) The council or hearing officer shall permit parties to file proposed findings and conclusions, together with the reasons therefor at the close of the hearings or within the time as is extended at the discretion of the council or hearing officer. The proposal shall be in writing and shall contain references to the record and to the authorities relied upon. Copies thereof shall be furnished to all parties.
- (g) The council, as soon as practicable and unless otherwise stipulated by the parties, not later than thirty days after receipt of the appeal, shall notify the appellant of the decision and order. This decision and order shall include separate findings of facts and conclusions of law if the decision is adverse to the appellant. The council shall incorporate in the decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and any accompanying findings and conclusions to each party or to the party's attorney of record.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-10, 91-11, 91-12, 343-5, 343-6)

Historical Note

Chapter 11-201, Administrative Rules, is based substantially on the Rules of Practice and Procedure of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]