

1 Working Draft Version 0.3  
2 Proposed Revisions to Hawai'i Administrative Rules  
3 Title 11 Department of Health  
4 Chapter 200 Environmental Impact Statement Rules  
5 **October 31, 2017**

6  
7 Version 0.3 is a proposed revision and reorganization of Hawai'i Administrative Rules (HAR) Title  
8 11 Department of Health, Chapter 200 Environmental Impact Statements ("HAR Chapter 11-  
9 200") incorporating feedback from the Environmental Council (EC), agencies, and the public.

10  
11 The EC anticipates preparing a Version 0.4 in November 2017 that could potentially become the  
12 proposed draft for which the EC conducts formal public hearings to adopt into rules.

13  
14 The EC requests feedback on Version 0.3 proposed changes as they relate to the reorganization  
15 and how to make the process work better as a whole, especially with respect to proposed policy  
16 direction and wording. While feedback on typos, incorrect underlining, bolding, highlighting, or  
17 section references, and other inadvertent errors are appreciated, these matters are addressed  
18 when preparation of the next draft occurs.

## 19 Background

20 The current HAR Chapter 11-200 rules were promulgated and compiled in 1996. An amendment  
21 to add an exemption class for the acquisition of land for affordable housing was added in 2007,  
22 although it has not been compiled with the rest of the rules.

23  
24 On July 27, 2017, the EC Permitted Interaction Group submitted Version 0.1 to the EC for its  
25 consideration in rulemaking to update HAR Chapter 11-200. Refer to Version 0.1 for additional  
26 background information. The EC approved Version 0.1 on August 8, 2017 to be its baseline  
27 document and to serve as a foundation for consulting with affected agencies and the public. The  
28 EC approval concluded the work of the Permitted Interaction Group.

29  
30 Version 0.2 was introduced to the EC on September 5, 2017 as a discussion document that  
31 incorporated public comment and the comments of Council members. The Council closed  
32 comments on Version 0.2 on October 20, 2017.

33  
34 Version 0.3 makes multiple changes based on agency and public comment and Council member  
35 input on Version 0.2. Most notably, Version 0.3 reorganizes, adds, and deletes sections to HAR  
36 Chapter 11-200 to create the proposed HAR Chapter 11-200A. The purpose of the  
37 reorganization is to ensure that the structure of the rules more closely follows the sequence of  
38 steps in the environmental review process. Version 0.3 is intended to be a discussion document.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 **How to Read Version 0.3**

2 Because Version 0.3 reorganizes the subchapters and sections, confusion could arise when  
3 referencing subchapters and sections. To ease discussion of differences between the 1996 rules  
4 and changes proposed in Version 0.3, Version 0.3 calls the rules “HAR Chapter 11-200A” and  
5 appends an “A” to the end of each subchapter and section number. A reference to a section  
6 number without using “A” is understood to be a reference to the 1996 rules.

7  
8 For example, Section 3 in the 1996 rules is about the periodic bulletin, while in Version 0.3  
9 Section 3A is about the computation of time. What was Section 3 (1996) has been moved to  
10 Subchapter 4A Filing and Publication in the Periodic Bulletin and the content that was in Section  
11 3 (1996) has been divided into three sections: 4A, 5A, and 6A.

12  
13 Version 0.3 does not carry forward all proposed additions and deletions considered in Versions  
14 0.1 and 0.2. Rather, Version 0.3 only shows changes with respect to the existing 1996 rules and  
15 2007 amendment for consideration in this working draft.

16  
17 While Versions 0.1 and 0.2 used a “Ramseyer-like” style of formatting to indicate proposed  
18 changes to HAR Chapter 11-200, Version 0.3 adheres more closely to the Ramseyer style  
19 format that the Legislative Reference Bureau recommends, while adapting the style for the  
20 purposes of a discussion document and to enhance readability.

- 21 ● Defined terms are bolded throughout the text to draw the reader’s attention to the fact  
22 that the term has a particular meaning within the context of the proposed rules.
- 23 ● Bullets shaded in gray follow each subchapter heading to provide a brief overview of the  
24 structure of the subchapter to orient the reader.
- 25 ● Footnotes accompanying each section title explain whether the section correlates to an  
26 existing section in the 1996 rules or is a new section and how the original language from  
27 the 1996 rules is treated in that section.
- 28 ● Footnotes within the text provide explanations and context for understanding proposed  
29 changes. Due to space limitations, explanations are brief and to the main point; they may  
30 not describe every aspect of a proposed change in full.
- 31 ● Per Ramseyer style, underlining indicates language that is moved between sections  
32 (i.e., 1996 language from a section other than the one that the proposed section  
33 correlates to) and new language introduced in Version 0.3.
- 34 ● Highlighting, in addition to underlining, distinguishes new language introduced in Version  
35 0.3 from 1996 rules language that has been moved.
- 36 ● Per Ramseyer style, deletions of 1996 rules language are bracketed and struck-through.
- 37 ● Deletions of language that was newly inserted in versions 0.1 or 0.2 of the Council’s  
38 proposed rules working drafts have been completely removed to present a clean  
39 document that captures the language retained to-date in the working drafts. In some  
40 cases, the new language in Version 0.3 may be identical or revised language considered  
41 in Version 0.1 or Version 0.2 and carried forward into Version 0.3.

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- 1 ● The use of acronyms and abbreviations has been reduced, except for:
    - 2 ○ EA: Environmental Assessment
    - 3 ○ EIS: Environmental Impact Statement
    - 4 ○ EISPN: Environmental Impact Statement Preparation Notice
    - 5 ○ FONSI: Finding of No Significant Impact
    - 6 ○ HAR: Hawaii Administrative Rules
    - 7 ○ HRS: Hawaii Revised Statutes
    - 8 ○ NEPA: National Environmental Policy Act
- 9 Understanding these acronyms and abbreviations is integral to meaningfully participating  
10 in the environmental review process. As such, they are retained in this working draft.

11 **Examples of Formatting**

Original 1996 rules language that is in a proposed section that correlates with an existing 1996 rules section.	The original 1996 language looks like this without any formatting.
Original 1996 rules language moved from a section of the 1996 rules that does not specifically correlate with the section it is now in, or is part of a new proposed section combining provisions from existing sections of the 1996 rules. This is referred to as “moved” language.	<u>Moved original 1996 language looks like this.</u>
New language in Version 0.3 of the council’s proposed rules working drafts.	<u>New language from Version 0.3 is underlined and highlighted in a light orange.</u>
1996 rules language that is proposed to be deleted is bracketed and struck-through.	1996 rules language that is to be deleted [ <del>looks like this</del> ].
<b>Example #1:</b> 1996 rules language that includes defined terms (“agencies”, “persons”, “environmental assessments”, “environmental impact statements”), proposed language to be deleted (“of”), and new language (“(EAs)”, “(EISs)”).	The purpose of this chapter is to provide <b>agencies</b> and <b>persons</b> with procedures, specifications [of] <u>regarding the</u> contents of <b>environmental assessments (EAs)</b> and <b>environmental impact statements (EISs)</b> , and criteria and definitions of statewide application.
<b>Example #2:</b> Moved 1996 rules language that includes a defined term (“office”), proposed words to be deleted (“agency” and “section 11-200-3”) and new language inserted (“and the rationale” and “this subchapter”).	The <b>office</b> shall publish notice of [ <del>agency</del> ] withdrawals <u>and the rationale</u> in accordance with [ <del>section 11-200-3</del> ] <u>this subchapter.</u>

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1 **Index of Version 0.3 and HAR 1996 Sections**

2 This table shows where sections from the 1996 rules appear in the proposed sections for Version  
3 0.3. In general, almost every section includes new and moved 1996 language. The HAR 1996  
4 sections cited below are the primary sources for the corresponding Version 0.3 section. “New”  
5 indicates that the section is almost entirely new or incorporate important points from a HAR 1996  
6 section.

7

<b>Version 0.3 HAR Chapter 11-200A</b>	<b>HAR 1996 Section</b>
<b>Subchapter 1A Purpose</b>	
§11-200A-1A Purpose	1, 14, 19
<b>Subchapter 2A Definitions and Terminology</b>	
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<b>Subchapter 3A Computation of Time</b>	
§11-200A-3A Computation of Time (new)	New
<b>Subchapter 4A Filing and Publication in the Periodic Bulletin</b>	
§11-200A-4A Periodic Bulletin	3, 11.2, 21, 27
§11-200A-5A Filing Requirements for Publication and Withdrawal	3, 9, 10, 11.1, 11.2, 20, 23
§11-200A-6A Republication of Notices, Documents, and Determinations	New
<b>Subchapter 5A Responsibilities</b>	
§11-200A-7A Identification of Approving Agency and Accepting Authority	3, 4, 23
<b>Subchapter 6A Applicability</b>	
§11-200A-8A General Applicability	New, 8
§11-200A-9A Applicability of Chapter 343 to Agency Actions	New, 5, 8
§11-200A-10A Applicability of Chapter 343 to Applicant Actions	New, 5, 6
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§11-200A-21A Contents of a Final Environmental Assessment	10
§11-200A-22A Notice of Determination for Final Environmental Assessments	9, 11.2
<b>Subchapter 10A Environmental Impact Statements</b>	
§11-200A-23A Consultation Prior to Filing a Draft Environmental Impact Statement	9, 15
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§11-200A-26A Comment Response Requirements for Draft Environmental Impact Statements	22
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<b>Subchapter 11A Appeals</b>	
§11-200A-29A Appeals to the Council	24
<b>Subchapter 12A National Environmental Policy Act</b>	
§11-200A-30A National Environmental Policy Act Actions: Applicability to Chapter 343, HRS	25, New
<b>Subchapter 13A Supplemental Environmental Impact Statements</b>	
§11-200A-31A Supplemental Environmental Impact Statements	26, 27, 28, 29
<b>Subchapter 14A Retroactivity and Severability</b>	
§11-200A-32A Retroactivity	New
§11-200A-33A Severability	30

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## 1 Major Topics Addressed in Version 0.3

2 Version 0.3 reorganizes the 1996 rules almost entirely and proposes changes affecting almost  
3 every section of the 1996 rules. In addition to the reorganization and numerous revisions to  
4 modernize grammar and enhance readability (“housekeeping”), the following major topics are  
5 addressed in Version 0.3:

- 6 • Clarifying definitions and aligning them with statutory definitions.
- 7 • Incorporating cultural practices in accordance with Act 50 (2000).
- 8 • Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e., *The*  
9 *Environmental Notice*), including for unusual situations involving publishing again.
- 10 • Aligning the “triggers” requiring environmental review for agencies and applicants with  
11 statutory language.
- 12 • Clarifying the environmental review process as it applies to states of emergency and  
13 emergency actions.
- 14 • Clarifying roles and responsibilities of proposing agencies and approving agencies in the  
15 environmental review process.
- 16 • Revising the requirements and procedures for creating exemption lists and exempting  
17 actions from further environmental review.
- 18 • Modernizing submittals, deadlines, comment and response, and distribution to recognize  
19 electronic communication.
- 20 • Revising the comment and response requirements and procedures for environmental  
21 assessments (EAs) and environmental impact statements (EISs).
- 22 • Clarifying style standards for EAs and EISs, including when an action is a program or a  
23 project.
- 24 • Clarifying significance criteria thresholds for determining whether to issue an exemption  
25 notice, Finding of No Significant Impact (FONSI), or EIS Preparation Notice (EISPN).
- 26 • Clarifying requirements and procedures for directly preparing an EIS instead of an EA.
- 27 • Revising requirements for conducting scoping meetings following an EISPN.
- 28 • Clarifying content requirements for Draft and Final EISs.
- 29 • Revising EIS comment and response requirements.
- 30 • Clarifying acceptance criteria.
- 31 • Clarifying procedures for appealing non-acceptance to the EC.
- 32 • Revising procedures for joint federal-state environmental review.
- 33 • Consolidating into one section the requirements and procedures for determining when to  
34 do a Supplemental EIS, including aligning the requirements with statute and case law.
- 35 • Adding a retroactivity section for actions that have already completed environmental  
36 review or are undergoing review at the time the rules would be enacted.

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30		
31		
32		

## 1 Subchapter 1A Purpose

- 2 • Expresses the purpose of HAR Chapter 11-200A.
- 3 • Consolidates policy statements about conducting EISs into this section and reframes the
- 4 policy statements to be about the environmental review process, and includes direction
- 5 on consultation.

### 6 § 11-200A-1A Purpose<sup>1</sup>

- 7 (a) Chapter 343, Hawaii Revised Statutes, (HRS)<sup>2</sup>, establishes a system of environmental  
8 review at the state and county levels ~~[which]~~ that<sup>3</sup> shall ensure that environmental  
9 concerns are given appropriate consideration in decision making along with economic  
10 and technical considerations. The purpose of this chapter is to provide **agencies** and  
11 **persons** with procedures, specifications ~~[of]~~ regarding the<sup>4</sup> contents of **environmental**  
12 **assessments (EAs)**<sup>5</sup> and **environmental impact statements (EISs)**<sup>6</sup>, and criteria and  
13 definitions of statewide application.
- 14
- 15 (b) [An EIS] EAs and EISs [is] are meaningless without the conscientious application of the  
16 [EIS] environmental review process as a whole, and shall not be merely a self-serving  
17 recitation of benefits and a rationalization of the proposed action. Agencies and  
18 applicants shall ensure that [statements] EAs and EISs are prepared at the earliest  
19 opportunity in the planning and decision-making process. This shall assure an early open  
20 forum for discussion of adverse effects and available alternatives, and that the decision-  
21 makers will be enlightened to any environmental consequences of the proposed action  
22 prior to decision making<sup>7, 8</sup>.
- 23
- 24

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<sup>1</sup> Formerly § 11-200-1, HAR (1996). All language in this section comes from section 11-200-1, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>2</sup> Housekeeping.

<sup>3</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>4</sup> Increases clarity.

<sup>5</sup> Provides acronym for environmental assessment.

<sup>6</sup> Provides acronym for environmental impact statements.

<sup>7</sup> Emphasizes that the environmental review process is to occur before committing to a course of action.

<sup>8</sup> Modified and moved from existing 1996 HAR chapter 11-200 rules language in section 11-200-14, HAR (1996) to emphasize that the full environmental review process should be conscientiously applied to be meaningful. The original language was specific to EISs but is also relevant for EAs.

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- 1 (c) In preparing any document, proposing agencies and applicants shall:<sup>9</sup>  
2 (1) [make] Make every effort to convey the required information succinctly in a form  
3 easily understood, both by members of the public and by government decision-  
4 makers, giving attention to the substance of the information conveyed rather than  
5 to the particular form, or length, of the document;<sup>10</sup>  
6 (2) [care shall be taken] Take care to concentrate on important issues and to ensure  
7 that the document remains an essentially self-contained document, capable of  
8 being understood by the reader without the need for undue cross-reference;<sup>11</sup> and  
9 (3) Conduct any required consultation as mutual, open and direct, two-way  
10 communication, in good faith, to secure the meaningful participation of agencies  
11 and the public in the environmental review process.<sup>12</sup>  
12  
13 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-1, 343-6)  
14

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<sup>9</sup> Modifies language from § 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

<sup>10</sup> Source: § 11-200-19(c), HAR (1996). Modifies language from section 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

<sup>11</sup> Source: § 11-200-19(c), HAR (1996). Modifies language from section 11-200-19, HAR (1996) regarding Environmental Impact Statement Style to apply to both agencies and applicants (who now are authorized to prepare both the EA and EIS) and to all environmental review documents.

<sup>12</sup> Clarifies the spirit in which consultation should be engaged in to address comments that the word “consult” has previously been construed as solely providing information regarding a proposed action without allowing opportunity for response.

## 1 Subchapter 2A Definitions and Terminology

- 2 • Sets definitions and terms used in HAR Chapter 11-200A.
- 3 • Introduces new terms for “EIS public scoping meeting”, “Exemption list”, “Project”,
- 4 “Program”, “Proposing agency”, and “Trigger”.
- 5 • Deletes the terms “Exempt classes of action” and “Environmental impact”.
- 6 • Amends various definitions to remove process steps, clarify meaning, or make more
- 7 consistent with proposed changes.
- 8 • Moves definitions into alphabetical order based on revisions to their wording.
- 9 • Directs agencies to use their own statutes and rules when a term is not defined in this
- 10 chapter or HRS Chapter 343.

### 11 § 11-200A-2A Definitions and Terminology

12 As used in this chapter:

13  
14 "**Acceptance**" means a formal determination [~~of acceptability~~]<sup>13</sup> that the document required to be  
15 filed pursuant to chapter 343, HRS, fulfills the definitions and requirements of an **environmental**  
16 **impact statement (EIS)**,<sup>14</sup> [~~adequately describes identifiable environmental impacts, and~~  
17 ~~satisfactorily responds to comments received during the review of the statement]~~ **as prescribed**  
18 **by section 11-200A-28A**.<sup>15</sup> **Acceptance** does not mean that the **action** is environmentally sound  
19 or unsound, but only that the document complies with chapter 343, HRS, and this chapter. A  
20 determination of **acceptance** is required prior to implementing or approving the **action**.

21  
22 "**Accepting authority**" means the [~~final~~]<sup>16</sup> official **who**,<sup>17</sup> or **agency** that, [~~determines the~~  
23 ~~acceptability of the EIS document]~~ **makes the determination that a final EIS is required to be**  
24 **filed, pursuant to chapter 343, HRS, and that the final EIS fulfills the definitions and requirements**  
25 **of an EIS**<sup>18</sup>.

26  
27 "**Action**" means any **program** or **project** to be initiated by an **agency** or **applicant**.

28  
29 "**Addendum**" means an attachment to a **draft** [~~environmental assessment]~~ **EA**<sup>19</sup> or draft  
30 [~~environmental impact statement]~~ **EIS**<sup>20</sup>, prepared at the discretion of the **proposing agency**. [~~or~~]

---

<sup>13</sup> Housekeeping. Removes redundant language.

<sup>14</sup> Housekeeping.

<sup>15</sup> Removes redundant language containing a subset of the requirements for an EIS to reduce uncertainty that other EIS sections may not apply because they are omitted in the definition.

<sup>16</sup> Removes “final” because it does not contribute additional meaning to the definition.

<sup>17</sup> Housekeeping.

<sup>18</sup> Clarifies that the role of the accepting authority is to determine the acceptability of a final EIS.

<sup>19</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

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1 **applicant, or**<sup>21</sup> **approving agency**, and distinct from a **supplemental EIS** [statement]<sup>22</sup>, for the  
2 purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections,  
3 or clarifications to information already contained in the **draft** [environmental assessment] **EA**<sup>23</sup> or  
4 the draft [environmental impact statement] **EIS** already filed with the **office**.

5  
6 "**Agency**" means any department, office, board, or commission of the state or county  
7 government [which] **that** is part of the executive branch of that government.

8  
9 "**Applicant**" means any **person** [who] **that**<sup>24</sup>, pursuant to statute, ordinance, or rule, officially  
10 requests **approval** from an **agency** for a proposed **action**.

11  
12 "**Approval**" means a **discretionary consent** required from an **agency** prior to [actual]<sup>25</sup>  
13 implementation of an **action**. [~~Discretionary consent means a consent, sanction, or~~  
14 ~~recommendation from an agency for which judgment and free will may be exercised by the~~  
15 ~~issuing agency, as distinguished from a ministerial consent. Ministerial consent means a~~  
16 ~~consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed~~  
17 ~~by law or rule without the use of judgment or discretion.]<sup>26</sup>~~

18  
19 "**Approving agency**" means an **agency** that issues an **approval** prior to [actual]<sup>27</sup>  
20 implementation of an **applicant**<sup>28</sup> **action**.

21  
22 "**Council**" [or "**EC**"]<sup>29</sup> means the environmental **council**.

23  
24 "**Cumulative impact**" means the **impact** on the **environment** [which] **that** results from the  
25 incremental **impact** of the **action** when added to other past, present, and reasonably  
26 foreseeable future **actions** regardless of what **agency** or **person** undertakes such other  
27 **actions**. **Cumulative impacts** can result from individually minor but collectively significant  
28 **actions** taking place over a period of time.

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<sup>20</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>21</sup> Clarifies that an applicant may also choose to prepare an addendum where necessary.

<sup>22</sup> Removes redundant language. An EIS is by definition a statement.

<sup>23</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>24</sup> Stylistic change because a "person" as defined by the rules is not always a human.

<sup>25</sup> Removes unnecessary word.

<sup>26</sup> Removes "discretionary consent" from the definition and makes it a standalone definition that mirrors the chapter 343, HRS.

<sup>27</sup> Removes unnecessary word.

<sup>28</sup> Approving agencies are only in the case of applicants because chapter 343, HRS environmental review only applies to applicants when an applicant action needs a discretionary consent (an approval) to proceed and contains a trigger under section 343-5, HRS.

<sup>29</sup> Removes unnecessary acronym from the rules. The Environmental Council will be referred to as the Council or the Environmental Council only.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1  
2 **"Discretionary consent"** means a consent, sanction, or recommendation from an **agency** for  
3 which judgment and free will may be exercised by the issuing **agency**, as distinguished from a  
4 ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an  
5 **agency** upon a given set of facts, as prescribed by law without the use of judgment or  
6 discretion.<sup>30</sup>

7  
8 **"Draft environmental assessment"** means the ~~[environmental assessment]~~ **EA** submitted by a  
9 **proposing agency** or an **approving agency** for public review and comment when that **agency**  
10 anticipates a ~~[negative declaration]~~ **finding of no significant impact (FONSI)**<sup>31</sup> ~~[determination]~~.

11  
12 **"Effects"** or **"impacts"** as used in this chapter are synonymous. **Effects** may include ecological  
13 **effects** (such as the **effects** on natural resources and on the components, structures, and  
14 functioning of affected ecosystems), aesthetic **effects**, historic **effects**, cultural **effects**,  
15 economic **effects**, social **effects**, or health **effects**, whether **primary**, **secondary**, or  
16 **cumulative, immediate or delayed**<sup>32</sup>. **Effects** may also include those **effects** resulting from  
17 **actions** ~~[which]~~ that may have both beneficial and detrimental **effects**, even if on balance the  
18 **agency** believes that the **effect** will be beneficial.

19  
20 **"EIS preparation notice"**<sup>33</sup> ~~[or]~~ **"EISPN"**<sup>34</sup>, or **"preparation notice"** means a determination  
21 ~~[based on an environmental assessment that the subject]~~ that an<sup>35</sup> **action** may have a  
22 **significant effect** on the **environment** and, therefore, will require the preparation of an  
23 ~~[environmental impact statement]~~ **EIS**, based on either an **EA** or an **agency's** judgment and  
24 experience that the proposed **action** may have a **significant effect** on the **environment**.<sup>36/37</sup>

25  
26 **"EIS public scoping meeting"** means a meeting in which **agencies**, citizen groups, and the  
27 **general public** are notified of the opportunity to assist the **proposing agency** or **applicant** in  
28 determining the range of **actions**, alternatives, **impacts**, and proposed mitigation measures to  
29 be considered in the draft **EIS** and the **significant** issues to be analyzed in depth in the draft  
30 **EIS**."<sup>38</sup>

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<sup>30</sup> Definition removed from "approval" and made standalone. Mirrors section 343-2, HRS, language and expands on ministerial definition (which was existing language in section 11-200-2, HAR (1996)).

<sup>31</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>32</sup> Incorporates the language from the definition of "environmental impact" which is proposed for deletion.

<sup>33</sup> Housekeeping.

<sup>34</sup> Adds common acronym for use throughout the rules.

<sup>35</sup> Moves the EA language to the end of the paragraph and combines it with the new direct-to-EIS language.

<sup>36</sup> Although an applicant may also proceed directly to an EIS, it must first be authorized to do so by the accepting agency based on the agency's judgment and experience. See chapter 343-5(e), HRS.

<sup>37</sup> Moved under "E" because "EISPN" is used more frequently than "preparation notice".

<sup>38</sup> Adds definition for EIS public scoping meeting required under section 11-200A-23A.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 **"Emergency action"** means an **action** to prevent or mitigate loss or damage to life, health,  
2 property, or essential public services in response to a sudden unexpected occurrence  
3 demanding such immediate **action**.  
4

5 **"Environment"** means humanity's surroundings, inclusive of all the physical, economic, cultural,  
6 and social conditions that exist within the area affected by a proposed **action**, including land,  
7 human and animal communities, **health**,<sup>39</sup> air, water, minerals, flora, fauna, ambient noise, and  
8 objects of historic, **cultural**,<sup>40</sup> or aesthetic significance.  
9

10 **"Environmental assessment"** or **"EA"**<sup>41</sup> means a written evaluation [~~to determine whether an~~  
11 ~~action may have a significant environmental effect]~~ **that serves to provide sufficient evidence and**  
12 **analysis to determine whether an action may have a significant effect.**<sup>42</sup>  
13

14 [~~"Environmental impact" means an effect of any kind, whether immediate or delayed, on any~~  
15 ~~component of the environment.]<sup>43</sup>  
16~~

17 **"Environmental impact statement," "statement,"** or **"EIS"** means an informational document  
18 prepared in compliance with chapter 343, HRS[~~, and this chapter and which fully complies with~~  
19 ~~subchapter 7 of this chapter]~~<sup>44</sup>. The initial [statement] **EIS**<sup>45</sup> filed for public review shall be  
20 referred to as the draft [environmental impact statement] **EIS** and shall be distinguished from the  
21 final [environmental impact statement] **EIS**, which is the document that has incorporated the  
22 public's comments and the responses to those comments. The final [environmental impact  
23 statement] **EIS** is the document that shall be evaluated for acceptability by the [respective]<sup>46</sup>  
24 **accepting authority**.  
25

26 [~~"Exempt classes of action" means exceptions from the requirements of chapter 343, HRS, to~~  
27 ~~prepare environmental assessments, for a class of actions, based on a determination by the~~  
28 ~~proposing agency or approving agency that the class of actions will probably have a minimal or~~  
29 ~~no significant effect on the environment.]<sup>47</sup>  
30~~

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<sup>39</sup> Clarifies that "environment" also includes "health". The items in this list correspond with the definition of "effects", which includes "health".

<sup>40</sup> Adds "cultural" to the definition of "environment" to align the definition with Act 50 (2000).

<sup>41</sup> Adds common abbreviation for use throughout the rules.

<sup>42</sup> Adds to the statutory definition to emphasize that an EA needs to provide sufficient evidence to make a significance determination rather than merely an assertion or lengthy analysis.

<sup>43</sup> Deletes and merges definition with "effects"/ "impacts" definition.

<sup>44</sup> Redundant because if it complies with chapter 343, HRS, then it necessarily complies with this chapter.

<sup>45</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>46</sup> Removes unnecessary language.

<sup>47</sup> Removes the definition because the concept of "classes of actions" is removed in subchapter 8A. Subchapter 8A uses "general types" instead of "classes of actions" to be consistent with chapter 343, HRS.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 **“Exemption list”** means a list prepared by an **agency** pursuant to subchapter 8A of the types of  
2 **actions** the **agency** finds fit into the general types of **action** enumerated in section 11-200A-15A  
3 and that subject to the conditions of this chapter and chapter 343, HRS may be exempt from  
4 preparation of an **EA**.<sup>48</sup>

5  
6 **“Exemption notice”** means a ~~brief notice kept on file by the proposing agency, in the case of a~~  
7 ~~public action, or the agency with the power of approval, in the case of a private action, when it~~  
8 ~~has determined that the proposed project is an exempt or emergency project] notice produced in~~  
9 ~~accordance with subchapter 8A for an action that a proposing agency or approving agency~~  
10 ~~on behalf of an applicant determines to be exempt from preparation of an EA.~~<sup>49</sup>

11  
12 **“Final environmental assessment”** means either the ~~environmental assessment] EA~~ submitted  
13 by a **proposing agency** or an **approving agency** following the public review and comment  
14 period for the **draft** ~~environmental assessment] EA~~ and in support of either a **FONSI** or ~~a~~  
15 ~~preparation notice] an EISPN~~<sup>50</sup> ~~]; [determination; or the environmental assessment submitted by a~~  
16 ~~proposing agency or an approving agency subject to a public consultation period when such an~~  
17 ~~agency clearly determines at the outset that the proposed action may have a significant effect~~  
18 ~~and hence will require the preparation of a statement.]~~<sup>51</sup>

19  
20 **“Finding of no significant impact”** or **“FONSI”** means a determination by an **agency** based on  
21 **an EA** that an **action** not otherwise exempt will not have a **significant effect** on the  
22 **environment** and therefore does not require the preparation of an **EIS**. A **FONSI** is required prior  
23 to implementing or approving the **action**.<sup>52</sup>

24  
25 **“Impacts”** means the same as **“effects”**.<sup>53</sup>

26  
27 **“Issue date”** means the date imprinted on the **periodic bulletin** required by section 343-3, HRS.

28  
29 **“National Environmental Policy Act”** or **“NEPA”**<sup>54</sup> means the **National Environmental Policy**  
30 **Act** of 1969, Public Law 91-190, 42 U.S.C. [§] **sections** 4321-4347, as amended.

31  

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<sup>48</sup> Provides definition for exemption list.

<sup>49</sup> Revises the language to be a document prepared by following the requirements of subchapter 8A.

<sup>50</sup> Housekeeping. This is a global edit throughout the document. Any instance of this edit is for housekeeping purposes, unless otherwise noted.

<sup>51</sup> Chapter 343, HRS, now provides for a direct to EIS pathway when based on an agency’s judgment and experience, the agency concludes that the proposed action may have a significant effect on the environment. The agency may then directly proceed to an EIS, or in the case of an applicant, may authorize an applicant to proceed directly to the preparation of an EIS. For both proposing agencies and applicants, the EIS preparation begins with an EISPN.

<sup>52</sup> Moves the language for the deleted “Negative declaration” into alphabetical order under “FONSI”.

<sup>53</sup> Adds a reference for anyone looking up the word “impacts” to direct them to the word “effects”.

<sup>54</sup> Adds common acronym for use throughout the rules.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 ~~["Negative declaration" or "finding of no significant impact" means a determination by an agency~~  
2 ~~based on an environmental assessment that a given action not otherwise exempt does not have~~  
3 ~~a significant effect on the environment and therefore does not require the preparation of an EIS.~~  
4 ~~A negative declaration is required prior to implementing or approving the action.]<sup>55</sup>~~  
5

6 "Office" means the **Office of Environmental Quality Control**.<sup>56</sup>  
7

8 "Periodic bulletin" or "**bulletin**" means the document required by section 343-3, HRS, and  
9 published by the **office**.  
10

11 "Person" includes any individual, partnership, firm, association, trust, estate, private corporation,  
12 or other legal entity other than an **agency**.  
13

14 ~~["Preparation notice" or "EIS preparation notice" means a determination based on an~~  
15 ~~environmental assessment that the subject action may have a significant effect on the~~  
16 ~~environment and, therefore, will require the preparation of an environmental impact statement.]<sup>57</sup>~~  
17

18 "**Primary impact**," or "**primary effect**," or "**direct impact**,"<sup>58</sup> or "**direct effect**" means **effects**  
19 ~~[which] **that**~~ are caused by the **action** and occur at the same time and place.  
20

21 "**Project**" means a discrete, planned undertaking that has a defined beginning and end time, is  
22 site specific, and has a specific goal or purpose.<sup>59</sup>  
23

24 "**Program**" means a series of one or more **projects** to be carried out concurrently or in phases  
25 within a general timeline, that may include multiple sites or geographic areas, and is undertaken  
26 for a broad goal or purpose. A **program** may include: a number of separate **projects** in a given  
27 geographic area which, if considered singly, may have minor **impacts**, but if considered together  
28 may have **significant impacts**; separate **projects** having generic or common **impacts**; an entire  
29 plan having wide application or restricting the range of future alternative policies or **actions**,  
30 including new significant changes to existing land use plans, development plans, zoning  
31 regulations, or **agency** comprehensive resource management plans; implementation of a single  
32 **project** or multiple **projects** over a long timeframe; or implementation of a single **project** over a  
33 large geographic area.<sup>60</sup>  
34

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<sup>55</sup> Moves the language for the deleted "Negative declaration" into alphabetical order under "FONSI".

<sup>56</sup> Housekeeping.

<sup>57</sup> Moved entire definition up under "E" because "EISPN" is used more frequently than "preparation notice".

<sup>58</sup> Housekeeping.

<sup>59</sup> Adds a definition for "project" to provide greater clarity about what activities rise to being a "project" and therefore an "action" requiring environmental review.

<sup>60</sup> Adds a definition for "program" to provide greater clarity about what activities rise to being a "program" and therefore an "action" requiring environmental review.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 **"Proposing agency"** means any state or county **agency** that proposes an **action** under chapter  
2 **343, HRS.**<sup>61</sup>

3  
4 **"Secondary impact[~~]~~"** [~~or~~] **"secondary effect[~~]~~"** [~~or~~] **"indirect impact[~~]~~"** or **"indirect effect"**  
5 means **an** [effects] **effect** [which] **that** [are] **is** caused by the **action** and [are] **is** later in time or  
6 farther removed in distance, but [are] **is** still reasonably foreseeable.<sup>62</sup> [~~Indirect~~] **An indirect**  
7 [effects] **effect** may include **a** growth-inducing [effects] **effect**<sup>63</sup> and other **effects** related to  
8 induced changes in the pattern of land use, population density or growth rate, and related  
9 **effects** on air, [~~and~~] water,<sup>64</sup> and other natural systems, including ecosystems.

10  
11 **"Significant effect"** or **"significant impact"** means the sum of **effects** on the quality of the  
12 **environment**, including **actions** that irrevocably commit a natural resource, curtail the range of  
13 beneficial uses of the **environment**, are contrary to the [~~state's~~] **State's**<sup>65</sup> environmental policies  
14 or long-term environmental goals and guidelines as established by law, [~~or~~]<sup>66</sup> adversely affect the  
15 economic **welfare**,<sup>67</sup> [~~or~~] social welfare, **or**<sup>68</sup> **cultural practices of the community and State**,<sup>69</sup> or  
16 are otherwise set forth in section [41-200-12] **11-200A-12A** [~~of this chapter~~]<sup>70</sup>.

17  
18 **"Supplemental [statement] EIS"** means an [additional environmental impact statement] **updated**  
19 **EIS**<sup>71</sup> prepared for an **action** for which [a statement] **an EIS** was previously accepted, but which  
20 has since changed substantively in size, scope, intensity, use, location, or timing, among other  
21 things.

22  
23 **A "trigger"** means any use or activity listed in section 343-5(a), HRS, requiring preparation of an  
24 **EA.**<sup>72</sup>

61 Added definition because the term is used frequently throughout the rules.

62 Changes grammatic structure of sentence to singular to mirror the definition of effect or impact as a singular object.

63 Stylistic change to reflect changes made to previous sentence.

64 Housekeeping.

65 Housekeeping.

66 Housekeeping.

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

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

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

70 Housekeeping.

71 Housekeeping.

72 Provides a new definition for "trigger". "Trigger" is a widely used term commonly understood by the public and even used by the Supreme Court. Introducing this term formally simplifies discussion of these uses or activities.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 Unless defined above, elsewhere within this chapter, or in chapter 343, HRS, a **proposing**  
2 **agency or approving agency** may use its administrative rules or statutes that they implement to  
3 interpret undefined terms.<sup>73</sup>

4

5 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-6)

6

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<sup>73</sup> Provides clarification on how to interpret terms not defined in this chapter or chapter 343, HRS. The proposing agency or approving agency may use their own administrative rules or statutes to interpret undefined terms in this chapter.

1 Subchapter 3A Computation of Time

- 2 • Standardizes the computation of time for all time periods prescribed by this chapter and  
3 HRS Chapter 343.

4 § 11-200A-3A Computation of Time<sup>74</sup>

5 In computing any period of time prescribed or allowed by this chapter, order of the council, or by  
6 any applicable statute, the day of the act, event, or default after which the designated period of  
7 time is to run, shall not be included. The last day of the period so computed shall be included  
8 unless it is a Sunday or legal holiday.<sup>75</sup>

9  
10 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 1-29, 8-1, 343-6) (Imp: HRS §§ 1-29, 8-1, 343-6)

11

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<sup>74</sup> Creates new subchapter and section to provide clarification on the computation of time. Language is consistent with HAR chapter 11-201 Environmental Council Rules of Practice and Procedure (1985), section 11-201-14, HAR.

<sup>75</sup> Provides for computation of time consistent with HAR 11-201 Environmental Council Rules of Practice and Procedure (1985), 11-201-14, HAR. For example, the publication date of a draft EA in the bulletin is day zero. Holidays and weekends are included in counting to thirty days, but if the deadline falls on a state holiday or non-working day, the deadline is the next working day.

1 Subchapter 4A Filing and Publication in the Periodic  
2 Bulletin

- 3 • Organizes the previous periodic bulletin subchapter into three sections.  
4 • Section 4A is about the periodic bulletin itself and what is published in it.  
5 • Section 5A is how to file for publication in the bulletin and consolidates previous language  
6 in various sections of the HAR (1996) regarding filing requirements into one place.  
7 • Section 6A is new language for when an agency or applicant seeks to publish the same  
8 notice, document, or determination that it has published before and how to handle  
9 associated comment periods.

10 § 11-200A-4A Periodic Bulletin<sup>76</sup>

- 11 (a) The **periodic bulletin** shall be issued on the eighth and twenty-third days of each  
12 month.<sup>77</sup>  
13  
14 (b) ~~[The office shall inform the public through the publication of a periodic bulletin of the~~  
15 ~~following:]~~ When filed in accordance with section 11-200A-5A, the **office** shall publish the  
16 following in the **periodic bulletin** to inform the public of **actions** undergoing chapter 343,  
17 HRS environmental review and the associated public comment periods provided here or  
18 elsewhere by statute:<sup>78</sup>  
19 (1) **Exemption notices:**<sup>79</sup>  
20 (2) ~~[Notices filed by agencies of the availability of environmental assessments]~~ Draft  
21 **EAs** and appropriate **addendum** documents for **public** review and ~~[comments]~~  
22 thirty-day comment period, including notice of an anticipated **FONSI**.<sup>80/81</sup>  
23 (3) Final **EAs**, including notice of a **FONSI**, or an **EISPN** with thirty-day comment  
24 period and notice of **EIS public scoping meeting**, and appropriate **addendum**  
25 documents:<sup>82</sup>

<sup>76</sup> Includes provisions from § 11-200-3, HAR (1996), which has been divided into two sections in v0.3, including this section and one specific to filing (11-200A-5A). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from 11-200-3, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>77</sup> Source: § 11-200-3(c), HAR (1996).

<sup>78</sup> Source: § 11-200-3(a), HAR (1996).

<sup>79</sup> Subsection 8A requires consultation for and publication of an exemption notice when an agency has not received council concurrence with its exemption list within seven years of implementing the action.

<sup>80</sup> Although an applicant prepares the EA, it is the approving agency that files a notice of availability of the EA with the office.

<sup>81</sup> Source: § 11-200-3(a), HAR (1996).

<sup>82</sup> Source: modified § 11-200-11.2(a)-(b), HAR (1996).

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (4) Notice of an EISPN with thirty-day comment period and notice of EIS public  
2 scoping meeting, and appropriate addendum documents;<sup>83</sup>  
3 (5) [Notices filed by agencies of] Evaluations and determinations that supplemental  
4 [statements] EISs are required or not required;<sup>84</sup>  
5 (6) [The availability of statements] Draft EISs, including draft supplemental  
6 [statements] EISs, and appropriate addendum documents for public review and  
7 forty-five day comment period;<sup>85</sup>  
8 (7) Final EISs, including final supplemental EISs, and appropriate addendum  
9 documents;<sup>86</sup>  
10 (8) [The] Notice of acceptance or non-acceptance of [statements] EISs, including  
11 supplemental EISs;<sup>87</sup>  
12 (9) Republication of any chapter 343, HRS notices, documents, or determinations;<sup>88</sup>  
13 (10) Notices of withdrawal of any chapter 343, HRS notices, documents, or  
14 determinations;<sup>89</sup>  
15 (11) Other notices required by the rules of the council.<sup>90</sup>  
16  
17 (c) When filed in accordance with this subchapter, the office shall publish other notices  
18 required by statute,<sup>91</sup> or rules, including those not specifically related to chapter 343,  
19 HRS.<sup>92</sup>  
20  
21

<sup>83</sup> Provides for publication of notice of EISPN when prepared without a Final EA through the direct-to-EIS pathway.

<sup>84</sup> Source: modified § 11-200-3(a)(2), HAR (1996) (publication of the determination regarding preparation of a supplemental EIS was previously in section 11-200-27, HAR (1996)).

<sup>85</sup> Source: § 11-200-3(a), HAR (1996).

<sup>86</sup> Source: § 11-200-21, HAR (1996), requiring the office to public notice of availability of EISs. In electronic format, the office also publishes the EIS itself.

<sup>87</sup> Source: § 11-200-3(a), HAR (1996).

<sup>88</sup> Requires the office to republish chapter 343, HRS notices, documents, or determinations when appropriate. The proposed filing section (11-200A-5A) and proposed republication of notices, documents, and determinations section (11-200A-6A) provide further requirements for the republication of certain submissions.

<sup>89</sup> Requires the office to publish notices of withdrawals. For example, under the 1996 rules, section 11-200-23 allowed for withdrawal of an EIS with written notification to the office. The office informs the public of the withdrawal through publication of the notice in the bulletin. The proposed filing section (11-200A-5A) provides further requirements for the withdrawal of certain submissions.

<sup>90</sup> Source: § 11-200-3(a), HAR (1996).

<sup>91</sup> Section 343-3, HRS, also requires the OEQC to publish in the bulletin other matters not related to environmental review, such as a public hearing to process a habitat conservation plan, a proposed conservation plan or safe harbor agreement, an incidental take license as part of a habitat conservation plan or safe harbor agreement, and an application for the registration of land by accretion.

<sup>92</sup> For example, the Department of Land and Natural Resource's regulations regarding shoreline certifications require notice to be published in the bulletin.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (d) The **office** may, on a space or time<sup>93</sup> available basis, publish other notices not  
2 specifically related to chapter 343, HRS.<sup>94</sup>  
3  
4 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 341-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-6)  
5

---

<sup>93</sup> Section 5A(a), HAR, shortens the submittal deadline from eight days to four days, which may limit the ability of the OEQC to include non-mandatory material in the bulletin.

<sup>94</sup> Source: § 11-200-3(f), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-5A Filing Requirements for Publication and  
2 Withdrawals<sup>95</sup>

- 3
- 4 (a) Anything<sup>96</sup> required to be published in the **bulletin** shall be submitted to the **office** before  
5 the close of business four<sup>97</sup> business days prior to the **issue date**.<sup>98/99</sup>
- 6
- 7 (b) All submittals to the **office** for publication in the **bulletin** shall be accompanied by a  
8 completed informational form [which] that provides whatever information the **office** needs  
9 to properly notify the public. The information requested may include the following: the title  
10 of the **action**; the islands affected by the proposed **action**; tax map key numbers; street  
11 addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or  
12 other geographic data<sup>100</sup>; applicable permits, including for **applicants**, the **approval**  
13 requiring chapter 343, HRS environmental review;<sup>101</sup> whether the proposed **action** is an  
14 **agency** or an **applicant action**; a citation of the applicable federal or state statutes  
15 requiring preparation of the document; the type of document prepared; the names,  
16 addresses, email addresses, phone numbers<sup>102</sup> and contact persons as applicable of the  
17 **accepting authority**, the **proposing agency**, the **approving agency**, the **applicant**, and  
18 the consultant; and a brief narrative summary of the proposed **action** [which] that  
19 provides sufficient detail to convey the full **impact** of the proposed **action** to the public.<sup>103</sup>
- 20
- 21 (c) The **office** shall not accept untimely submittals or revisions thereto after the **issue date**  
22 **deadline** for which the submittal was originally filed has passed.<sup>104</sup>
- 23

---

<sup>95</sup> This is a new section synthesizing language from multiple sections in chapter 11-200, HAR (1996). In the 1996 rules, the filing requirements are integrated into content or process steps and require numerous cross-references. Consolidating and standardizing the filing requirements into one section makes it easy to know where to look and to reference one section.

<sup>96</sup> This captures notices, documents, and determinations required under chapter 343, HRS as well as requirements for publication pursuant to other statutes or administrative rules (e.g., HAR § 13-222-12 for shoreline applications).

<sup>97</sup> The office does not need eight business days anymore to prepare the periodic bulletin.

<sup>98</sup> Removes instructions on the computation of time because v0.3 proposes a new section on computation of time to deal with such questions consistently.

<sup>99</sup> Modified language from section 11-200-3(c), HAR (1996).

<sup>100</sup> Clarifies that the office may ask for geographic data such as that included in a standard geographic information systems file. The existing rules already allow for this but this language is to make it clearer.

<sup>101</sup> Clarifies that the informational form may require identification of the specific approval that in combination with a trigger requires an applicant to go through chapter 343, HRS environmental review. The existing rules already allow for this but this language is to make it clearer.

<sup>102</sup> Makes explicit that the telephone numbers and email addresses of contact persons may be required by the office as part of the information needed to inform the public through the bulletin.

<sup>103</sup> Source: Modified § 11-200-3(d), HAR (1996).

<sup>104</sup> Clarifies that the office shall not accept untimely submissions. Late submissions will typically be published in the next issued bulletin. Submitters should speak with the office if a deadline is missed.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (d) In accordance with the **agency's** rules or, in the case of an **applicant EIS**, the  
2 **applicant's** judgment, anything filed with the **office** may be withdrawn by the **agency** or  
3 **applicant** that filed the submittal with the **office**. To withdraw a submittal, the **agency** or  
4 **applicant** shall submit to the **office** a written letter informing the **office** of the<sup>105</sup>  
5 withdrawal<sup>106</sup>. The **office** shall publish notice of [agency] withdrawals and the rationale in  
6 accordance with ~~[section 11-200-3]~~ this subchapter.<sup>107/108</sup>  
7  
8 (e) To be published in the **bulletin**, all submittals to the **office** shall meet the filing  
9 requirements in subsections (a)-(c) and be prepared in accordance with this chapter and  
10 chapter 343, HRS, as appropriate. The following shall meet additional filing  
11 requirements:<sup>109</sup>  
12 (1) When the document is a draft **EA** with an anticipated **FONSI**<sup>110</sup>, the **proposing**  
13 **agency** or **approving agency** shall:  
14 (A) File the document and determination with the **office**; and  
15 (B) Deposit, or require the **applicant** to deposit, concurrently with the filing  
16 [~~paragraph (5)~~] to the **office**, one paper<sup>111</sup> copy of the draft [environmental  
17 assessment] **EA** at the nearest state library in each county in which the  
18 proposed **action** is to occur and one paper copy at the Hawaii Documents  
19 Center<sup>112/113</sup>  
20 (C) Distribute, concurrently [~~with the filing in paragraph (5),~~] the draft  
21 [~~environmental assessment~~] **EA** to other agencies having jurisdiction or  
22 expertise as well as citizen groups and individuals which the **proposing**  
23 **agency** reasonably believes to be affected.<sup>114</sup>

<sup>105</sup> Housekeeping.

<sup>106</sup> Clarifies that agencies should support the withdrawal notice with a rationale.

<sup>107</sup> Source: Modified §§ 11-200-11.1(d) and 11-200-11.2(d), HAR (1996).

<sup>108</sup> Combines sections 11-200-11.1(d), HAR (1996); 11-200-11.2(d), HAR (1996); 11-200-23(f), HAR (1996) as modified in v0.2 into one paragraph and makes explicit that any notice, document, or determination, or any other submittal filed with the office may be withdrawn.

<sup>109</sup> The purpose of this subsection is to set forth any filing requirements specific to a submittal type and to make explicit the entity or entities responsible for fulfilling those requirements. If a submittal type is not listed here, then, to be published in the bulletin, it must meet the requirements in subsections (a)-(c) and the entity or entities responsible for fulfilling those requirements is made explicit elsewhere in this chapter.

<sup>110</sup> Provides filing requirements for a Draft EA and anticipated FONSI, modified from sections 11-200-10 and 11-200-11.1, HAR (1996). A draft EA is always published with an anticipated FONSI. Note that at any point in the preparation of a draft EA, one may go to the EIS stage starting with an EISPN. The draft EA is then called a final EA and attached to the EISPN.

<sup>111</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access can review the document.

<sup>112</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EA.

<sup>113</sup> Source: §§ 11-200-9(a)(10)(agency), 11-200-9(b)(10)(applicant), HAR (1996).

<sup>114</sup> Source: §§ 11-200-9(a)(6)(agency), 11-200-9(b)(5)(applicant), HAR (1996).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (2) When the document is a **final EA** with a **FONSI**, the **proposing agency** or  
2 **approving agency** shall:
- 3 (A) Incorporate, or require the **applicant** to incorporate, the **FONSI** into the  
4 contents of the **final EA**, as prescribed in section 11-200A-21A and  
5 section 11-200A-22A;
- 6 (B) File the **final EA** and the incorporated **FONSI** with the **office**; and  
7 (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to  
8 the **office**, one paper copy of the **final EA** with the Hawaii Documents  
9 Center.<sup>115/116</sup>
- 10 (3) When the document is a **final EA** with an **EISPN**, the **proposing agency** or  
11 **approving agency** shall:
- 12 (A) Incorporate, or require the **applicant** to incorporate, the **EISPN** into the  
13 contents of the **final EA**, as prescribed in section 11-200A-21A, section  
14 11-200-22A, and section 11-200A-23A;
- 15 (B) File the incorporated **EISPN** with the **final EA**; and  
16 (C) Deposit, or require the **applicant** to deposit, concurrently with the filing to  
17 the **office**, one paper copy of the **final EA** with the Hawaii Documents  
18 Center.<sup>117/118</sup>
- 19 (4) When the notice is an **EISPN** without the preparation of an **EA**, the **proposing**  
20 **agency** or **approving agency** shall:
- 21 (A) File the **EISPN** with the **office**; and  
22 (B) Deposit, or require the **applicant** to deposit, concurrently with the filing to  
23 the **office**, one paper<sup>119</sup> copy of **EISPN** at the nearest state library in each  
24 county in which the proposed action is to occur and one paper copy at the  
25 Hawaii Documents Center.<sup>120</sup>
- 26 (5) When the document is a draft **EIS**, the **proposing agency** or **applicant** shall:

<sup>115</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a final EA.

<sup>116</sup> Source: modified §§ 11-200-10 and 11-200-11.2, HAR (1996).

<sup>117</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a final EA.

<sup>118</sup> Source: modified §§ 11-200-10 and 11-200-11.2, HAR (1996).

<sup>119</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access can review the document.

<sup>120</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of an EISPN.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (A) [sign] Sign and date [the original copy of]<sup>121</sup> the draft [or final] EIS [and  
2 shall]<sup>122</sup>;
- 3 (B) Indicate that the draft [statement] EIS and all ancillary documents were  
4 prepared under the signatory's direction or supervision and that the  
5 information submitted, to the best of the signatory's knowledge fully  
6 addresses document content requirements as set forth in [sections 11-  
7 200-17 and 11-200-18, as appropriate] subchapter 10A.<sup>123</sup>
- 8 (C) File the draft EIS with the accepting authority and the office  
9 simultaneously<sup>124</sup> ; and
- 10 (D) Deposit, or require the applicant to deposit, concurrently with the filing to  
11 the office, one paper<sup>125</sup> copy of the draft EIS at the nearest state library in  
12 each county in which the proposed action is to occur and one paper copy  
13 at the Hawaii Documents Center.<sup>126/127</sup>
- 14 (6) When the document is a final EIS, the proposing agency or applicant shall:
- 15 (A) [sign] Sign and date [the original copy of]<sup>128</sup> the [draft or] final EIS [and  
16 shall]<sup>129</sup>;
- 17 (B) Indicate that the final [statement] EIS and all ancillary documents were  
18 prepared under the signatory's direction or supervision and that the  
19 information submitted, to the best of the signatory's knowledge fully  
20 addresses document content requirements as set forth in [sections 11-  
21 200-17 and 11-200-18, as appropriate] subchapter 10A,<sup>130</sup> and
- 22 (C) File the final EIS with the accepting authority and the office  
23 simultaneously.<sup>131</sup>
- 24 (7) When the notice is an acceptance or non-acceptance of a final EIS, the  
25 accepting authority shall:
- 26 (A) File the notice of acceptance or non-acceptance of a final EIS with the  
27 office; and

<sup>121</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>122</sup> Source: modified § 11-200-20(d), HAR (1996).

<sup>123</sup> Source: Modified § 11-200-20(d), HAR (1996).

<sup>124</sup> Source: Modified § 11-200-20(a), HAR (1996).

<sup>125</sup> Emphasizes that a printed, paper hard copy is to be deposited at the nearest state library so that the people nearest the proposed action without electronic access can review the document.

<sup>126</sup> Adds a request from the State Library that only two hard copies be submitted to the state library system, one for the local library near the proposed action as an environmental/social justice concern and one at the document center for archival records. Ideally, these are the only two hard copies produced of a draft EIS.

<sup>127</sup> Mirrors language for other documents and determinations that are required to be deposited in hard copy at the nearest state library in each county in which the proposed action is to occur and with the Hawaii Documents Center.

<sup>128</sup> Removes "original, signed" as it does not make sense for digital documents.

<sup>129</sup> Source: modified § 11-200-20(d), HAR (1996).

<sup>130</sup> Source: modified § 11-200-20(d), HAR (1996).

<sup>131</sup> Source: modified § 11-200-20(a), HAR (1996).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (B) Simultaneously transmit the notice to the **proposing agency or applicant**.  
2 (8) When the notice is of the withdrawal of an anticipated **FONSI, FONSI, or EISPN**  
3 the **proposing agency or approving agency** shall include a rationale of the  
4 withdrawal specifying any associated documents to be withdrawn.<sup>132</sup>  
5 (9) When the notice is of the withdrawal of a draft **EIS** or final **EIS**, the **proposing**  
6 **agency or applicant** shall simultaneously file the notice with the **office** and  
7 submit the notice with **accepting authority**.<sup>133</sup>  
8 (10) When the submittal is a changed version of a notice, document, or determination  
9 previously published and withdrawn, the submittal shall be filed as the “second”  
10 submittal, or “third” or “fourth”, as appropriate. (Example: A draft **EIS** is withdrawn  
11 and changed. It is then filed with the **office** for publication as the “second draft  
12 **EIS**” for the particular **action**.)<sup>134</sup>  
13

14 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-6)  
15

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<sup>132</sup> Source: modified § 11-200-11.1(d), HAR (1996).

<sup>133</sup> Source: modified § 11-200-23(f), HAR (1996).

<sup>134</sup> Provides clarification on how withdrawn, amended, and re-filed notices, documents, and determinations shall be referred to. Corrections for items such as typos can be handled through addenda.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-6A Republication of Notices, Documents, and  
2 Determinations<sup>135</sup>

3 (a) An agency or applicant responsible for filing a chapter 343, HRS notice, document, or  
4 determination, may file a previously published submittal that has not been changed in the  
5 bulletin provided that the filing requirements of this subchapter and any other publication  
6 requirements set forth in this chapter or chapter 343, HRS are satisfied.<sup>136</sup>

7  
8 (b) When the publication of a previously published chapter 343, HRS notice, document, or  
9 determination involves a public comment period under this chapter or chapter 343, HRS:

10 (1) The public comment period shall be as required for that notice, document, or  
11 determination pursuant to this chapter or chapter 343, HRS or as otherwise  
12 statutorily mandated. (For example, publication of an unchanged draft EIS initiates  
13 a forty-five day public comment period upon publication in the bulletin.); and

14 (2) Any comments received during the comment period must be considered in the  
15 same manner as set forth in this chapter and chapter 343, HRS, for that notice,  
16 document, or determination type, in addition to comments received in any other  
17 comment period associated with the publication of the notice, document, or  
18 determination.<sup>137</sup>

19  
20 [Eff and comp \_\_\_\_] (Auth: HRS §§ 341-3, 343-5, 343-6) (Imp: HRS §§ 341-3, 343-3, 343-5,  
21 343-6)

22

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<sup>135</sup> New section to address the practice of republication of chapter 343 notices, documents, and determinations. Chapter 343, HRS is silent on whether comment periods may be extended. In practice, proposing agencies, applicants, and approving agencies have sought to extend comment periods. When this occurs outside the standard time period for public comment or outside the notification process through the bulletin, inconsistencies arise in the process creating questions of public notification and, in some cases, standing. Instead of having inconsistently applied “extended comment period,” this section states that the standard filing, comment, and response requirements of chapter 343, HRS apply each time something is published.

<sup>136</sup> Provides that any agency or applicant that filed a chapter 343 notice, document, or determination may withdraw and republish the same notice, document, or determination. Other submittals to the office required by council rules, statute other than chapter 343, HRS, or an agency’s administrative rules other than this chapter may also be withdrawn and republished, but must be done so in accordance with that statute or those rules. There is no chapter 343, HRS obligation to publish an unchanged document again; however, a proposing or approving agency’s own statutes, rules, or procedures may require or call for it.

<sup>137</sup> Clarifies when a public comment period is required with the republication of a chapter 343, HRS notice, document, or determination and how comments received in two or more comment periods for an unamended but republished notice, document, or determination are to be handled. The requirement to address comments in all comment periods resulting from multiple publications is to reduce the possibility of repeated publications to achieve fewer comments. Comments received outside of the multiple comment periods are not be required to be addressed.

## 1 Subchapter 5A Responsibilities

- 2 • Identifies who is the decision maker in which circumstances for agencies and applicants  
3 going through environmental review.

### 4 § 11-200A-7A Identification of Approving Agency and Accepting 5 Authority<sup>138</sup>

6 (a) Whenever an **agency** proposes an **action**, the ~~[final]~~<sup>139</sup> authority to accept ~~[a statement]~~  
7 **an EIS** shall rest with:

- 8 (1) The governor, or ~~[an]~~ **the governor's**<sup>140</sup> authorized representative, whenever an  
9 **action** proposes the use of state lands or ~~[the use of]~~<sup>141</sup> state funds or ~~[ ]~~<sup>142</sup>  
10 whenever a state **agency** proposes an **action** ~~[within]~~ **under**<sup>143</sup> section ~~[11-200-~~  
11 ~~6(b)]~~ **11-200A-9A**; or  
12 (2) The mayor, or ~~[an]~~ **the mayor's**<sup>144</sup> authorized representative, of the respective  
13 county whenever an **action** proposes only the use of county lands or county  
14 funds.

15 **In the event that an action involves state and county lands, state and county**<sup>145</sup> **funds, or**  
16 **both state and county**<sup>146</sup> **lands and funds, the governor or the governor's authorized**  
17 **representative shall have authority to accept the EIS.**<sup>147</sup>

18  
19 (b) Whenever an **applicant** proposes an **action**, the authority for requiring an **EA or**<sup>148</sup>  
20 ~~[statements]~~ **EIS**, ~~[and for]~~ **making a determination regarding any required EA, and**<sup>149</sup>  
21 accepting any required ~~[statements]~~ **EIS** ~~[that have been prepared]~~ shall rest with the

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<sup>138</sup> Previously § 11-200-4, HAR (1996). All language in this section comes from section 11-200-4, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>139</sup> Removes the word "final" because it does not add to the meaning of the sentence.

<sup>140</sup> Housekeeping.

<sup>141</sup> Housekeeping.

<sup>142</sup> Housekeeping.

<sup>143</sup> Housekeeping.

<sup>144</sup> Housekeeping.

<sup>145</sup> Clarifies that "state and county" funds are meant.

<sup>146</sup> Clarifies that "state and county" lands and funds are meant.

<sup>147</sup> Clarifies cases where a proposed action has mixed state and county lands or funds or both lands and funds. This language is modified from the original language in section 11-200-23, HAR (1996).

<sup>148</sup> Adds EAs to the identification of which agency has responsibility. Note that this change also means that the office is explicitly empowered to determine the agency in situations involving EAs, whereas existing language is that the office is explicitly empowered for situations involving EISs and implicitly for situations involving EAs.

<sup>149</sup> Adds EAs to the identification of which agency has responsibility. Language is phrased so that the agency can make a FONSI or EISPN determination.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 **approving**<sup>150</sup> **agency** [~~initially receiving and agreeing~~] **that initially received and agreed**<sup>151</sup>  
2 to process the request for an **approval**. **With respect to EISs, this approving agency is**  
3 **also called the accepting authority.**<sup>152</sup>  
4
- 5 (c) In the event that [~~there is~~]<sup>153</sup> more than one **agency** [~~that~~] **is proposing the action or, in**  
6 **the case of applicants,**<sup>154</sup> **more than one agency**<sup>155</sup> has jurisdiction over the **action**, and  
7 these **agencies** are unable to agree as to which **agency** has the responsibility for  
8 complying with [~~section 343-5(e)~~] **chapter 343**<sup>156</sup>, HRS, [~~the office, after consultation with~~]  
9 the **agencies** involved, shall **consult with one another to** determine which **agency** is  
10 responsible **for compliance**<sup>157</sup>. In making the [~~determination~~] **decision**, the [~~office~~]  
11 **agencies** shall take into consideration, including, but not limited to, the following factors:  
12 (1) [~~The~~] **Which agency** [~~with the~~] **has the** greatest responsibility for supervising or  
13 approving the **action** as a whole;  
14 (2) [~~The~~] **Which agency** [~~that~~] can most adequately fulfill the requirements of chapter  
15 343, HRS, and this chapter;  
16 (3) [~~The~~] **Which agency** [~~that~~] has special expertise or **greatest**<sup>158</sup> access to  
17 information **relevant to the action's implementation and impacts**<sup>159</sup>; [~~and~~]  
18 (4) The extent of participation of each **agency** in the **action**[-]; **and**  
19 (5) **In the case of an action with proposed use of state or county lands or funds,**  
20 **which agency has the most land or funds involved in the action.**<sup>160</sup>  
21
- 22 (d) **In the event that there is more than one agency that is proposing the action, or in the**  
23 **case of applicants, more than one agency has jurisdiction over the action, and after**  
24 **applying the criteria in subsection (c) these agencies are unable to agree as to which**  
25 **agency has the responsibility for complying with chapter 343, HRS, the office, after**

<sup>150</sup> Housekeeping. Clarifies that the "agency" is called the "approving agency."

<sup>151</sup> Housekeeping.

<sup>152</sup> Clarifies that the approving agency for environmental review compliance is also the accepting authority for applicants. HRS § 343-5(e) states that for applicants "the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an [EA] of the proposed action," which is the approving agency. It further states that the "authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval." The agency with the authority to accept a final statement is the accepting authority, which is the agency initially receiving and agreeing to process the request for approval.

<sup>153</sup> Stylistic change to increase readability.

<sup>154</sup> Clarifies the authority for determining who has responsibility for chapter 343, HRS compliance.

<sup>155</sup> Stylistic change to increase readability.

<sup>156</sup> Housekeeping. Section paragraphs change frequently over time; language here is adjusted to refer to the chapter of the statute because it is a more stable reference point.

<sup>157</sup> Stylistic change to increase readability.

<sup>158</sup> Helps to distinguish among agencies because all agencies have access to information but some have more access to information related to the action than others.

<sup>159</sup> Clarifies what kind of information is meant.

<sup>160</sup> Instructs agencies and the office to consider which agency has the most land or funds involved in an action when deciding which agency will be responsible for complying with chapter 343, HRS.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 consultation with the **agencies** involved, shall apply the same considerations in  
2 subsection (c) to decide which **agency** is responsible for compliance.<sup>161</sup>  
3  
4 (e) The **office** shall not serve as the **accepting authority** for any **proposed agency or**  
5 **applicant action**.<sup>162</sup>  
6  
7 (f) The **office** may provide recommendations to the **agency or applicant**<sup>163</sup> responsible for  
8 the ~~environmental assessment~~ **EA** or **EIS** regarding any applicable administrative  
9 content requirements set forth in this chapter.<sup>164</sup>

10  
11 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)  
12

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<sup>161</sup> The changes to subsections (c) and (d) provide a process for agencies to decide amongst themselves which agency shall be responsible for complying with chapter 343, HRS when two or more agencies are involved in an action. A list of considerations is provided for the agencies to make their decision. This section is also now divided into two subsections, providing that if agencies cannot make a decision, the office shall decide for the agencies using the same considerations listed in subsection (c).

<sup>162</sup> Clarifies that office may not serve as the accepting authority.

<sup>163</sup> Clarifies that the office may also provide recommendations regarding administrative content requirements to applicants preparing EAs and EISs.

<sup>164</sup> Source: modified § 11-200-3(e), HAR (1996).

## 1 Subchapter 6A Applicability

- 2 • Revises the applicability subchapter to focus on the steps to decide whether an activity  
3 requires chapter 343, HRS review.
- 4 • Section 8A is a new section providing a *de minimis* standard for activities that do not rise  
5 to being an action.
- 6 • Section 9A addresses agency actions, the trigger for the use of state or county lands or  
7 funds, and emergency actions (both under a governor-declared state of emergency and  
8 for emergency situations requiring immediate response.
- 9 • Section 10A addresses applicant actions and incorporates section 343-5.5, HRS.
- 10 • Section 11A addresses multiple or phased actions.

### 11 § 11-200A-8A General Applicability<sup>165</sup>

12 Prior to beginning chapter 343, HRS, environmental review, a **proposing agency** or an  
13 **approving agency** in case of an **applicant action**, using its own judgment and experience, shall  
14 define the nature and scope of the proposed activity to determine the necessity of chapter 343,  
15 HRS environmental review. Routine activities and ordinary functions that by their nature do not  
16 have the potential to individually or **cumulatively** adversely affect the **environment** more than  
17 negligibly do not rise to the level of an **action** requiring chapter 343, HRS environmental review.  
18 Examples of routine activities and ordinary functions may include, among others, routine repair,  
19 maintenance, purchase of supplies, and continuing<sup>166</sup> administrative activities involving  
20 personnel only and personnel-related matters<sup>167</sup><sup>168</sup>

21  
22 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

<sup>165</sup> Provides a new section on the first step of determining whether an activity requires chapter 343, HRS environmental review and clarifies which activities do not rise to the level of requiring review.

<sup>166</sup> Includes ongoing administrative activities, such as purchasing paper clips.

<sup>167</sup> Captures item deleted from section 11-200-8(a)(10), HAR, (1996) in the v0.3 equivalent subchapter 8A, and specifically section 11-200A-15A regarding the general types of actions eligible for exemption.

<sup>168</sup> Establishes a *de minimis* level of activity for being considered eligible for environmental review. Chapter 343, HRS. This section was originally presented in v0.2 under the exemptions section 11-200-08 (v0.2).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-9A Applicability of Chapter 343 to Agency Actions<sup>169</sup>

2 (a) Chapter 343, HRS, environmental review shall be required for any agency action that  
3 includes one or more triggers, as identified in section 343-5(a), HRS.<sup>170/171</sup>

4 (1) Under section 343-5(a), HRS, use of state or county funds shall include any form  
5 of funding assistance flowing from the State or a<sup>172</sup> county, and use of state or  
6 county lands includes any use (title, lease, permit, easement, licenses, etc.) or  
7 entitlement to those lands.<sup>173</sup>

8 (2) [~~For agency actions, chapter 343, HRS, exempts from applicability~~] Under section  
9 343-5(a), HRS, any feasibility or planning study for possible future **programs** or  
10 **projects** ~~which~~ that the **agency** has not approved, adopted, or funded are  
11 exempted from chapter 343, HRS, environmental review.<sup>174</sup> Nevertheless, if an  
12 **agency** is studying the feasibility of a proposal, it shall consider environmental  
13 factors and available alternatives and disclose these in any future [~~assessment~~]  
14 **EA** or subsequent [~~statement~~] **EIS**. If [~~however,~~]<sup>175</sup> the planning and feasibility  
15 studies involve testing or other actions [~~which~~] that may have a **significant**  
16 **impact** on the environment, [~~then~~]<sup>176</sup> an [~~environmental assessment~~] **EA or EIS**<sup>177</sup>  
17 shall be prepared.<sup>178</sup> (Example: Testing that would likely not require an EA or EIS  
18 could include city infrastructure trials to improve traffic flows or reduce congestion  
19 within an already built environment, such as deploying temporary bulbouts.)<sup>179</sup>

20 (3) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under  
21 section 205-2(d)(11)<sup>180</sup>, HRS or section 205-4.5(a)(13)<sup>181</sup>, HRS, must perform  
22 environmental review only when required under section 205-5(b)<sup>182</sup>, HRS.

<sup>169</sup> Formerly § 11-200-5, HAR (1996). All language in this section comes from section 11-200-5, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>170</sup> Language from *Umberger v. Dept. of Land and Nat. Resources*, SCWC-13-0002125, 2017 WL 3887456 (Haw. Sept. 6, 2017) (“For an activity to be subject to HEPA environmental review, the second requirement is that it must fall within at least one category of land uses or administrative acts (known as “triggers”) enumerated in HRS § 343-5(a) (2010”).

<sup>171</sup> All language in this section comes from section 11-200-5, HAR (1996), section 343-5, HRS, or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>172</sup> Housekeeping.

<sup>173</sup> Source: Modified § 11-200-5(c), HAR (1996).

<sup>174</sup> Stylistic change.

<sup>175</sup> Housekeeping.

<sup>176</sup> Housekeeping.

<sup>177</sup> Acknowledges direct-to-EIS pathway.

<sup>178</sup> Source: Modified § 11-200-5(c), HAR (1996).

<sup>179</sup> Provides an example of testing that would likely not require preparation of an EA or EIS because it would likely take place in a built environment.

<sup>180</sup> This exception to the general requirements of chapter 343, HRS to agricultural tourism is provided for under section 343-5(a)(1), HRS. Section 205-2(d)(11) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of

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- 1  
2 (b) When an agency proposes an action during a governor-declared state of  
3 emergency, the proposing agency shall document in its records  
4 that the emergency action was undertaken pursuant to a specific emergency  
5 proclamation.<sup>183</sup> If the emergency action has not substantially commenced within  
6 sixty days of the emergency proclamation, the action will be subject to chapter 343,  
7 HRS.<sup>184/185/186</sup>  
8  
9 (c) In the event of a sudden unexpected emergency causing or likely to cause loss or  
10 damage to life, health, property, or essential public service, but for which a declaration of  
11 a state of emergency has not been made, a proposing agency undertaking an  
12 emergency action shall document in its records that the emergency action was  
13 undertaken pursuant to a specific emergency.<sup>187</sup>

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visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

<sup>181</sup> Section 205-4.5(a)(13) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

<sup>182</sup> Section 205-5(b) states in pertinent part: “Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity.”

<sup>183</sup> Adds that the agency has a responsibility to record when it undertakes an action during an emergency proclamation and that the action occurred during a specific emergency proclamation in case a question arises about the lack of an assessment.

<sup>184</sup> Ensures that the exclusion from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under chapter 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations would re-start the sixty day count and extend the time that an action has to reach substantial commencement. This provision does not explicitly reference the possibility for extension because the extension is provided for under section 127A-14(d). The council does not have authority to make rules implementing section 127A-14(d) and therefore, to avoid any conflict that may arise if section 127A-14(d) is amended, these rules remain silent on it. The term “substantially commenced” is not defined here because the intent is to provide direction to agencies to timely implement the action but not define the standard for all agencies in all situations.

<sup>185</sup> Ensures that the actions excluded from chapter 343, HRS, are related to the declared emergency by requiring substantial commencement of the action within sixty days of the emergency proclamation. Under section 127A-14(d), HRS, a state of emergency automatically terminates after sixty days. Supplemental emergency proclamations could re-start the sixty day count and extend the time that an action has to reach substantial commencement. This provision does not explicitly reference the possibility for extension because the extension is provided for under section 127A-14(d). The council does not have authority to make rules implementing section 127A-14(d) and therefore, to avoid any conflict that may arise if section 127A-14(d) is amended, these rules remain silent on it.

<sup>186</sup> Source: modified § 11-200-8(f), HAR (1996).

<sup>187</sup> This provision is added to address situations where an agency must respond to an emergency and that response would fall within the scope of chapter 343, HRS, but the nature of the emergency requires

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[Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

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immediate response. The provision only allows an agency to act in an emergency to take immediate action to address the emergency in the absence of an emergency proclamation. For example, during a forest fire, an emergency firebreak may need to be cut. In the case of King Tides, an issue raised by one commenter, it would not extend to reconstruction to homes after the emergency has passed, but may apply to immediate measures to address the situation. Adds that the agency has a responsibility to record when it undertakes an action during an emergency and that the action occurred during a specific emergency in case a question arises about the lack of an assessment.

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1 § 11-200A-10A Applicability of Chapter 343 to Applicant Actions<sup>188</sup>

2 (a) Chapter 343, HRS, environmental review shall be required for any applicant action that:

3 (1) Requires one or more [agency] approvals<sup>189</sup> prior to implementation; and

4 (2) Includes one or more triggers identified in section 343-5(a), HRS.<sup>190</sup>

5 (A) Under Chapter 343-5(a), HRS, use of state or county funds shall include  
6 any form of funding assistance flowing from the State or a<sup>191</sup> county, and  
7 use of state or county lands includes any use (title, lease, permit,  
8 easement, licenses, etc.) or entitlement to those lands.<sup>192</sup>

9 (B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism  
10 under section 205-2(d)(11)<sup>193</sup>, HRS or section 205-4.5(a)(13)<sup>194</sup>, HRS,  
11 must perform environmental review only when required under section 205-  
12 5(b)<sup>195</sup>, HRS.<sup>196</sup>

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<sup>188</sup> Formerly § 11-200-6, HAR (1996). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from 11-200-6, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>189</sup> Deletes “agency” because “approval” is a defined term meaning a discretionary consent issued by an agency.

<sup>190</sup> Modifies § 11-200-6(a), HAR (1996). This reorganization is intended to clarify that the agency approval that fulfills the first criteria for the necessity of chapter 343, HRS environmental review does not need to relate to the trigger within the proposed action, which is the second criteria that necessitates chapter 343, HRS environmental review. Further, an applicant action may require multiple approvals. These should be considered as part of the whole action and not as creating discrete actions for each approval.

<sup>191</sup> Housekeeping.

<sup>192</sup> Source: Modified § 11-200-5(c), HAR (1996).

<sup>193</sup> This exception to the general requirements of chapter 343, HRS to agricultural tourism is provided for under section 343-5(a)(1), HRS. Section 205-2(d)(11) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

<sup>194</sup> Section 205-4.5(a)(13) states: “Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;”.

<sup>195</sup> Section 205-5(b) states in pertinent part: “Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity.”

<sup>196</sup> Subparagraph (a)(2)(A) draws from and modifies section 11-200-6(b), HAR (1996). Removes unnecessary language and retains the essential elements triggering applicability of chapter 343, HRS to applicant actions: discretionary consent and a trigger under 343-5, HRS. By incorporating reference to section 343-5(a), HRS in proposed subsection (a)(2), much of what was included in subsection 11-200-6(b), HAR (1996) becomes unnecessary and is removed.

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- 1 (b) Chapter 343, HRS environmental review is not required for **applicant actions** when:
- 2 (1) Notwithstanding any other law to the contrary, for any primary action that requires
- 3 a permit or approval that is not subject to a discretionary consent and that involves
- 4 a secondary action that is ancillary and limited to the installation, improvement,
- 5 renovation, construction, or development of infrastructure within an existing public
- 6 right-of-way or highway, that secondary action shall be exempt from this chapter;
- 7 provided that the **applicant** for the primary action shall submit documentation
- 8 from the appropriate **agency** confirming that no further discretionary approvals are
- 9 required.
- 10 (2) As used in this subsection<sup>197</sup>:
- 11 (A) "Discretionary consent" means an **action** as defined in section 343-2; or
- 12 an **approval** from a decision-making authority in an **agency**, which
- 13 **approval** is subject to a public hearing.
- 14 (B) "Infrastructure" includes waterlines and water facilities, wastewater lines
- 15 and wastewater facilities, gas lines and gas facilities, drainage facilities,
- 16 electrical, communications, telephone, and cable television utilities, and
- 17 highway, roadway, and driveway improvements.
- 18 (C) "Primary action" means an **action** outside of the highway or public right-of-
- 19 way that is on private property.
- 20 (D) "Secondary action" means an **action** involving infrastructure within the
- 21 highway or public right-of-way.<sup>198</sup>

22

23 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § §343-5, 343-6)

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<sup>197</sup> Definitions provided here only apply to this subsection b. As such, they are not bolded because they are not using the terms as defined by section 11-200A-2A, HAR. Terms used in this subsection as defined by section 11-200A-2A, HAR are bolded.

<sup>198</sup> Includes exclusion to chapter 343, HRS environmental review as provided for in chapter 343-5.5, HRS. This provision was added to chapter 343, HRS, in the 2012 legislative session (L 2012, c 312 § 1).

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1 § 11-200A-11A Multiple or Phased Actions<sup>199</sup>

2 A group of **actions** proposed by an **agency** or an **applicant** shall be treated as a single **action**  
3 when:

- 4 (1) The component **actions** are phases or increments of a larger total undertaking;  
5 (2) An individual [project] **action**<sup>200</sup> is a necessary precedent [for] **to**<sup>201</sup> a larger  
6 [project] **action**<sup>202</sup>;  
7 (3) An individual [project] **action**<sup>203</sup> represents a commitment to a larger [project]  
8 **action**<sup>204</sup>; or  
9 (4) The **actions** in question are essentially identical and a single **EA or**<sup>205</sup> [statement]  
10 **EIS** will adequately address the **impacts** of each individual **action** and those of  
11 the group of **actions** as a whole.

12

13 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)

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<sup>199</sup> Formerly § 11-200-7, HAR (1996). All language in this section comes from section 11-200-7, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>200</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>201</sup> Stylistic change.

<sup>202</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>203</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>204</sup> Replaces “project” with “action” because it could be an individual program or project that is part of a larger program or project.

<sup>205</sup> Clarifies that multiple or phased actions may also be reviewed in an EIS and do not necessarily require an EA prior to preparing an EIS.

## 1 Subchapter 7A Determination of Significance

- 2 • This subchapter provides direction to agencies in deciding the appropriate level of review  
3 to satisfy chapter 343, HRS, is required: exemption, EA and FONSI, or EIS and  
4 acceptance.
- 5 • Section 12A moves the significance criteria language to here as the criteria are the basis  
6 for agencies to decide the appropriate level of review.
- 7 • Section 13A provides that the proposing agency or approving agency uses judgment and  
8 experience to initially determine the level of environmental review, which may be an  
9 exemption, preparation of an EA, or direct preparation of an EIS.
- 10 • Section 14A addresses how to incorporate the consideration of previous actions into  
11 deciding the appropriate level of review.

### 12 § 11-200A-12A Significance Criteria<sup>206</sup>

- 13 (a) In considering the significance of potential environmental **effects**, agencies shall consider  
14 the sum of **effects** on the quality of the environment[;]<sup>207</sup> and shall evaluate the overall  
15 and **cumulative effects** of an action.
- 16
- 17 (b) In determining whether an **action** may have a **significant effect** on the **environment**,  
18 the **agency** shall consider every phase of a proposed **action**, the expected  
19 [consequences] **impacts**<sup>208</sup>, both **primary** and **secondary**, and the **cumulative** as well  
20 as the short-term and long-term **effects** of the **action**. In most instances, an **action** shall  
21 be determined to have a **significant effect** on the **environment** if it **is likely to**<sup>209/210</sup>
- 22 (1) [~~Involves an irrevocable commitment to loss or destruction of any natural or~~  
23 ~~cultural resource~~] **irrevocably commit a natural or cultural resource**<sup>211</sup>;
- 24 (2) [~~Curtails~~] **Curtail** the range of beneficial uses of the **environment**;

<sup>206</sup> Formerly § 11-200-12, HAR (1996). All language in this section comes from section 11-200-12, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>207</sup> Housekeeping.

<sup>208</sup> Replaces “consequences” with “impacts” because both “primary impact” and “secondary impact” are defined, but the use of “consequences” introduces a new, undefined term as a synonym for “impact”.

<sup>209</sup> While section 5 of chapter 345, HRS, provides that an EIS is required for an action that “may” have a significant effect, the Supreme Court of Hawaii has interpreted the word “may” to mean “likely”. For example, in *Kepoo v. Kane*, 106 Hawaii 270, 289, 103 P.3d 939, 958 (2005) the Court held that the proper inquiry for determining the necessity of an EIS is whether the proposed action will “likely” have a significant effect on the environment.

<sup>210</sup> Changes in (b)(1)-(13), unless otherwise indicated, align syntax with the revised language “is likely to” and revise language to more closely match the definition of “significant effect” in section 343-2, HRS, including mirroring the emphasis on “adverse” effects.

<sup>211</sup> This language is modeled on statutory language in section 343-2, HRS. Refer to proposed section 11-200A-24A(j) for more on natural and cultural resources in a draft EIS.

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- 1 (3) [~~Conflicts~~] **Conflict** with the [~~state's~~] **State's**<sup>212</sup> [~~long-term~~] environmental policies or  
2 **long-term environmental** goals [~~and guidelines as expressed in chapter 344, HRS,~~  
3 ~~or other laws,] **as established by law**<sup>213</sup> [~~and any revisions thereof and~~  
4 ~~amendments thereto, court decisions, or executive orders];~~  
5 (4) [~~Substantially affects~~] **Have a substantial adverse effect on** the economic **welfare,**  
6 [~~or~~] social welfare, **or cultural practices**<sup>214</sup> of the community or State;  
7 (5) [~~Substantially affects~~] **Have a substantial adverse effect on** public health;  
8 (6) [~~Involves~~] **involve adverse secondary impacts**, such as population changes or  
9 **effects** on public facilities;  
10 (7) [~~Involves~~] **involve** a substantial degradation of environmental quality;  
11 (8) Is individually limited but **cumulatively** has [~~considerable~~] **substantial adverse**  
12 **effect** upon the **environment** or involves a commitment for larger actions;  
13 (9) [~~Substantially affects~~] **Have a substantial adverse effect on** a rare, threatened, or  
14 endangered species, or its habitat;  
15 (10) [~~Detrimentially affects~~] **Have a substantial adverse effect on** air or water quality or  
16 ambient noise levels;  
17 (11) [~~Affects~~] **Have a substantial adverse effect on** or is likely to suffer damage by  
18 being located in an environmentally sensitive area such as a flood plain, tsunami  
19 zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh  
20 water, or coastal waters<sup>215</sup>;  
21 (12) [~~Substantially affects~~] **Have a substantial adverse effect on** scenic vistas and  
22 viewplanes, **during day or night,**<sup>216</sup> identified in county or state plans or studies; or,  
23 (13) [~~Requires~~] **Require** substantial energy consumption<sup>217</sup>.~~

24

25 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-6)

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<sup>212</sup> Housekeeping.

<sup>213</sup> Statutory language is not narrowed to chapter 344, HRS. This language acknowledges other laws with environmental goals such as the State Planning Act. "Laws" may be broadly defined to include common law and executive orders so long as they establish long-term environmental policies or goals.

<sup>214</sup> Revises language to match the definition of "significance" in section 343-2, HRS. Statutory language was amended by Act 50 (2000) to include cultural practices as part of significance.

<sup>215</sup> This criterion addresses concerns related to climate change adaptation such as impacts from sea-level rise, increased hurricane frequency and/or intensity, and endangered species migration. Proposing an action in a location likely to experience sea-level rise, coastal erosion, or increased exposure to hurricanes may be reason to require the preparation of an EIS.

<sup>216</sup> Clarifies that both the daytime and night-time effects on scenic vistas and viewplanes must be considered when determining if an action will have a significant effect. Bright lighting around an action site at night, for example, may disrupt scenic vistas or viewplanes even though the action site is not conspicuous and does not otherwise have a substantial adverse effect on the scenic vista or viewplane during the day.

<sup>217</sup> This criterion addresses concerns related to climate change mitigation. A proposed action likely to require substantial energy consumption, especially when drawing on energy generated from fossil-fuels, may be reason to require the preparation of an EIS.

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1 § 11-200A-13A Determination of Level of Environmental Review<sup>218</sup>

2 (a) For an **agency action**, through its judgment and experience, an **agency proposing an**  
3 **action**, shall assess the significance of the potential **impacts** of the **action**, including the  
4 **overall cumulative impact** in light of related past, present, and reasonably foreseeable  
5 **actions** in the area affected, to determine the level of environmental review necessary for  
6 **the action**.<sup>219</sup>

7  
8 (b) For an **applicant action**, within thirty days from the receipt of the **applicant's** request for  
9 **approval to the approving agency**,<sup>220</sup> through its judgment and experience, an  
10 **approving agency** shall assess the significance of the potential **impacts** of the **action**,  
11 **including the overall cumulative impact** in light of related past, present, and reasonably  
12 **foreseeable actions** in the area affected, to determine the level of environmental review  
13 **necessary for the action**.<sup>221</sup>

14  
15 (c) If the **proposing agency** or **approving agency** determines, through its judgment and  
16 **experience that the action will individually and cumulatively probably have minimal or**  
17 **no significant effects**,<sup>222</sup> and the **action** is one that is eligible for exemption under  
18 **section 11-200A-15A**, then the **agency** or the **approving agency** in the case of an  
19 **applicant** may prepare an **exemption notice** in accordance with subchapter 8A.<sup>223</sup>

20  
21 (d) If the **proposing agency** or **approving agency** determines, through its judgment and  
22 **experience, that the action is not eligible for an exemption, then the proposing agency**  
23 **shall prepare or the approving agency shall require the applicant to prepare an EA**  
24 **beginning with a draft EA in accordance with subchapter 9A, unless**:<sup>224</sup>

25 (1) In the course of preparing the **draft EA**, the **proposing agency** or **approving**  
26 **agency** determines, through its judgment and experience, that the **action may**  
27 **have a significant effect** and therefore require preparation of an **EIS**, then the  
28 **proposing agency** may prepare, or the **approving agency** may authorize the  
29 **applicant to prepare an EA as a final EA to support the determination prior to**

<sup>218</sup> Creates a new section that outlines the pathways of chapter 343, HRS environmental review: exemption, EA resulting in a FONSI or EISPN, and EIS resulting in an acceptance or nonacceptance.

<sup>219</sup> Modifies language from section 11-200-5(a), HAR (1996) and from section 343-5(b), HRS, and section 343-5(e), HRS.

<sup>220</sup> Source: § 11-200-9(b)(3), HAR (1996).

<sup>221</sup> Modifies language from section 11-200-5(a), HAR (1996), section 343-5(b), HRS, and section 343-5(e), HRS.

<sup>222</sup> Provides the standard for an exemption from preparing an EA under subchapter 8A, formerly section 11-200-8, HAR (1996) and drawn from section 343-6(a)(2), HRS ("actions [that] will probably have minimal or no significant effects on the environment").

<sup>223</sup> Sets forth the path for issuing an exemption.

<sup>224</sup> Clarifies that where an exemption is not appropriate and an action requires chapter 343, HRS environmental review, preparation of an EA beginning with a draft EA is required unless one of two situations exist as set forth in subparagraphs (d)(1) and (d)(2).

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1 preparing or requiring preparation of an **EIS** in accordance with subchapter  
2 10A;<sup>225</sup> or  
3 (2) The **proposing agency** or **approving agency** determines, through its judgment  
4 and experience that an **EIS** is likely to be required, then the **proposing agency**  
5 may choose, or an **approving agency** may authorize an **applicant** to prepare an  
6 **EIS** in accordance with subchapter 10A, beginning with preparation of an  
7 **EISPN**.<sup>226</sup>

8  
9 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

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<sup>225</sup> Provides that a proposing agency may begin with a final EA or approving agency may authorize an applicant to begin with a final EA when it is anticipated that an EIS will be required, but more information is required to substantiate that determination. Based on section 343-2, HRS.

<sup>226</sup> Provides for the direct to EIS route in section 343-5(b), HRS, for agency actions and in section 343-5(e), HRS, for applicant actions.

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1 § 11-200A-14A Consideration of Previous Determinations and  
2 Accepted Statements<sup>227</sup>

3 (a) ~~[Chapter 343, HRS, provides that whenever]~~ Whenever<sup>228</sup> an **agency** proposes to  
4 implement an **action** or receives a request for **approval**, the **agency** may consider and,  
5 when applicable and appropriate, incorporate by reference, in whole or in part, previous  
6 determinations of whether ~~[a statement]~~ an EIS is required, such as exemption notices,  
7 EAs, and EISPNs,<sup>229</sup> and previously accepted ~~[statements]~~ EISs.

8  
9 (b) Previous determinations, EAs,<sup>230</sup> and previously accepted ~~[statements]~~ EISs may be  
10 incorporated into an exemption notice, EA, EISPN, or EIS,<sup>231</sup> by ~~[applicants and]~~  
11 agencies and applicants<sup>232</sup> whenever the information contained therein is pertinent ~~[to~~  
12 ~~the decision at hand]~~<sup>233</sup> and has logical relevancy and bearing to the proposed action  
13 ~~[being considered]~~<sup>234</sup>.

14  
15 (c) Agencies and applicants<sup>235</sup> shall not, without considerable pre-examination and  
16 comparison, use past EAs,<sup>236</sup> determinations, and ~~[previous]~~ previously accepted<sup>237</sup>  
17 ~~[statement]~~ EISs to apply to the **action** at hand. The proposed action ~~[for which a~~  
18 ~~determination is sought]~~<sup>238</sup> shall be thoroughly reviewed prior to the use of previous  
19 determinations, EAs,<sup>239</sup> and previously accepted ~~[statements]~~ EISs. Further, when  
20 previous determinations, EAs,<sup>240</sup> and previous ~~[statements]~~ EISs are considered or  
21 incorporated by reference, they shall be substantially similar to and relevant to the  
22 proposed action ~~[then being considered]~~<sup>241</sup>.

23 [Eff and comp \_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

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<sup>227</sup> Formerly § 11-200-13, HAR (1996). All language in this section comes from section 11-200-13, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>228</sup> Removes the reference to chapter 343, HRS, so that the sentence is easier to read.

<sup>229</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>230</sup> Makes explicit the language in subsection 5(g) of chapter 343, HRS about which kinds of previous determinations may be considered, and the supporting EAs may be included.

<sup>231</sup> Makes explicit which notices, documents, and determination previously accepted determinations, EAS, and EISs may be incorporated.

<sup>232</sup> Housekeeping (word order).

<sup>233</sup> Removes unnecessary language and increases readability.

<sup>234</sup> Removes unnecessary language and clarifies that the action referenced is the proposed action.

<sup>235</sup> Clarifies that this subsection also applies to applicants preparing EISs.

<sup>236</sup> Clarifies that previously completed EAs may also be considered.

<sup>237</sup> Aligns with language elsewhere in this subsection that refers to "previously accepted" EISs.

<sup>238</sup> Removes unnecessary language and increases readability.

<sup>239</sup> Clarifies that previously completed EAs may also be considered.

<sup>240</sup> Clarifies that previously completed EAs may also be considered.

<sup>241</sup> Removes unnecessary language and increases readability.

1 Subchapter 8A Exempt Actions, List, and Notice  
2 Requirements<sup>242</sup>

- 3
- 4 • This subchapter provides direction to an agency when it has decided that an exemption is the appropriate level of review.
  - 5 • Section 15A establishes the general types of actions under which an exemption may be declared.
  - 6
  - 7 • Section 16A provides direction creating an exemption list.
  - 8 • Section 17A provides direction on how to prepare an exemption notice, including when an agency is required to consult on the exemption and publish the exemption notice in the
  - 9 bulletin.
  - 10

11 § 11-200A-15A General Types of Actions Eligible for Exemption<sup>243</sup>

- 12 (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.~~] **Some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.**<sup>244</sup>
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- 21 (b) **Actions** declared exempt from the preparation of an [~~environmental assessment~~] **EA** under this [~~section~~] **subchapter**<sup>245</sup> are not exempt from complying with any other applicable statute or rule.<sup>246</sup>
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<sup>242</sup> Divides 11-200-8, HAR (1996) regarding exemptions into three sections and groups them within one subchapter on exemptions.

<sup>243</sup> Source: § 11-200-8(a), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>244</sup> Incorporates language directly from section 343-6(2), HRS.

<sup>245</sup> Acknowledges that the former requirements of section 11-200-8, HAR (1996) are now divided among multiple sections within one subchapter.

<sup>246</sup> Source: Source: § 11-200-8(a), HAR (1996).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (c) The following ~~[list represents exempt classes of action]~~ **general**<sup>247</sup> **types**<sup>248</sup> **of actions are**  
2 **eligible for exemption**.<sup>249</sup>
- 3 (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or  
4 topographical features, involving ~~[negligible]~~ **minor**<sup>250</sup> or no expansion or change  
5 of use beyond that previously existing;
- 6 (2) Replacement or reconstruction of existing structures and facilities where the new  
7 structure will be located generally on the same site and will have substantially the  
8 same purpose,<sup>251</sup> capacity, density, height, and dimensions as the structure  
9 replaced;
- 10 (3) Construction and location of single, new, small facilities or structures and the  
11 alteration and modification of the same and installation of new, small, equipment  
12 and facilities and the alteration and modification of same, including, but not limited  
13 to:
- 14 (A) Single-family residences less than 3,500 square feet, **as measured by the**  
15 **controlling law under which the proposed action is being considered**,<sup>252</sup>  
16 **if**<sup>253</sup> not in conjunction with the building of two or more such units;
- 17 (B) Multi-unit structures designed for not more than four dwelling units if not in  
18 conjunction with the building of two or more such structures;
- 19 (C) Stores, offices, and restaurants designed for total occupant load of twenty  
20 ~~[persons]~~ **individuals**<sup>254</sup> or ~~[less]~~ **fewer**<sup>255</sup> per structure, if not in conjunction  
21 with the building of two or more such structures; and
- 22 (D) Water, sewage, electrical, gas, telephone, and other essential public utility  
23 services extensions to serve such structures or facilities; accessory or  
24 appurtenant structures including garages, carports, patios, swimming  
25 pools, and fences; and, acquisition of utility easements;
- 26 (4) Minor alterations in the conditions of land, water, or vegetation;
- 27 (5) Basic data collection, research, experimental management, and resource **and**  
28 **infrastructure testing and**<sup>256</sup> evaluation activities ~~[which]~~ **that** do not result in a  
29 serious or major disturbance to an environmental resource;

---

<sup>247</sup> Specific types are included on exemption lists and here, the categories are “general types” (formerly referred to as “classes”).

<sup>248</sup> Replaces “classes” language with “types” to mirror language in section 343-6(2), HRS.

<sup>249</sup> Source: § 11-200-8(a), HAR (1996).

<sup>250</sup> Replaces “negligible” with “minor” because in some cases minor operations, repairs, or maintenance can have little or no significant impact.

<sup>251</sup> “Purpose” also captures the concept of the structure or facility having the same “function” or “operation”.

<sup>252</sup> Counties and even different agencies within counties, measure residence area differently. This language acknowledges the difference.

<sup>253</sup> Stylistic change; mirrors provision below (B).

<sup>254</sup> Removes use of defined term “persons” to clarify that this provision relates to an occupant load of twenty individual human beings.

<sup>255</sup> Housekeeping.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (6) Construction or placement of minor structures accessory to existing facilities;  
2 (7) Interior alterations involving things such as partitions, plumbing, and electrical  
3 conveyances;  
4 (8) Demolition of structures, except those structures located on any historic site as  
5 designated in the national register or Hawaii [register as provided for in the  
6 National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. §470, as  
7 amended, or chapter 6E, HRS]<sup>257</sup> **Register of Historic Places**<sup>258</sup>, **or that are**  
8 **nominated**<sup>259</sup> **for placement on the national register or the Hawaii Register of**  
9 **Historic Places**<sup>260</sup> ;  
10 (9) Zoning variances except shoreline set-back variances; [and]<sup>261</sup>  
11 [~~(10)~~] ~~Continuing administrative activities including, but not limited to purchase of~~  
12 ~~supplies and personnel-related actions.]<sup>262</sup>  
13 (10) Acquisition of land and existing structures, including single or multi-unit dwelling  
14 units, for the provision of affordable housing<sup>263</sup>, involving no material change of  
15 use beyond [that] previously existing **uses**,<sup>264</sup> and for which the legislature has  
16 appropriated or otherwise authorized funding<sup>265</sup>[-]; **and**<sup>266</sup>  
17  
18  
19  
20~~

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<sup>256</sup> Incorporates infrastructure testing such as temporary interventions on roadways to test new designs or effects on traffic patterns.

<sup>257</sup> Unnecessary language.

<sup>258</sup> Adds specificity.

<sup>259</sup> Sets an identifiable administrative standard for when demolition of a historic structure may not be exempted.

<sup>260</sup> Aligns language with section 343-5(a)(8)(C), HRS.

<sup>261</sup> Housekeeping.

<sup>262</sup> This category is now included as a *de minimus* level of routine activities and ordinary functions that when they meet the criteria specified in section 11-200A-8A do not require chapter 343, HRS environmental review. Language is still being developed to address any current items on agency exemption lists that do not appear to properly fall under the other proposed general exemption types or *de minimus* standard.

<sup>263</sup> This existing language in section 11-200-8, HAR (1996, amended 2007) is undefined. It should be understood to mean the same as in the proposed eleventh general type for the new construction of affordable housing.

<sup>264</sup> Clarifies what “that” refers to.

<sup>265</sup> In 2007, the Council formally amended HAR Section 11-200-8 (1996) to add the exemption category for acquisition of land for affordable housing. The Council has not compiled the amendment to HAR Section 11-200-8 with HAR Chapter 11-200. This language incorporates the 2007 change.

<sup>266</sup> Housekeeping.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (11) New construction of affordable housing<sup>267</sup>, where affordable housing is defined by  
2 the controlling law applicable for the state or county **proposing agency** or  
3 **approving agency**<sup>268</sup>, that meets the following:  
4 (A) Has the use of state or county lands or funds or is within Waikiki as the  
5 sole requirements for compliance with chapter 343, HRS<sup>269</sup>;  
6 (B) As proposed conforms with the existing state urban land classification<sup>270</sup>;  
7 (C) As proposed is consistent with county zoning classifications that allow  
8 affordable housing<sup>271</sup>; and  
9 (D) Meets applicable federal, state, and county development standards<sup>272</sup>;  
10  
11 (d) All exemptions under the [classes] types<sup>273</sup> in this section are inapplicable when the  
12 **cumulative impact** of planned successive **actions** in the same place, over time, is

---

<sup>267</sup> The purpose of this proposed general type of exemption would be to support the orderly development of affordable housing in urban areas where affordable housing is a planned use. Per existing HAR § 11-200-8(b) (1996) and proposed HAR § 11-200A-15A(d), exemptions 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. That is, this exemption is not automatic.

<sup>268</sup> Affordable housing is defined differently by agency. This language directs agencies to use their respective law. For example, HRS § 201H-36(a)(4) states one standard: “affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development”. This would apply when the Hawaii Housing Finance and Development Corporation is approving a proposal related to that standard, while each county has its own county ordinance that would be the controlling law for the respective county agency making decisions about whether to use county lands or funds.

<sup>269</sup> This clause limits the eligibility of this exemption to the case of only one or both of two possible triggers: the use of state or county lands or funds and Waikiki. The limitation to these two triggers is to keep the focus on the involvement of the state or county to support affordable housing development where the only reason someone would undergo environmental review is because government is assisting the production of affordable housing and Waikiki because it is a developed, urbanized area that meets the other criteria of being classified state urban land and zoned to allow affordable housing. The presence of other triggers such as use within a shoreline (including a Waikiki shoreline) would mean this exemption would not be applicable.

<sup>270</sup> This clause limits the eligibility of this exemption to land that has already been classified by the State Land Use Commission as urban. If the proposed action involves land classified as agriculture, conservation, or rural, or includes a boundary amendment to change the classification, then the exemption would not be applicable.

<sup>271</sup> This clause limits the eligibility of this exemption to land that has already been zoned by the county for affordable housing. The counties organize their zoning differently so this language is meant to capture this variability. If the existing zoning for the proposed parcels do not allow affordable housing, then this exemption would not be applicable.

<sup>272</sup> This clause emphasizes that the proposed affordable housing meets the building requirements of where it is being proposed.

<sup>273</sup> Housekeeping.

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

This reorganization is referred to as HAR Chapter 11-200A

1           **significant**, or when an **action** that is normally insignificant in its **impact** on the  
2           **environment** may be **significant** in a particularly sensitive **environment**.<sup>274</sup>

3  
4   (e)   Any **agency**, at any time, may request that a new exemption [~~class~~] **type**<sup>275</sup> be added, or  
5           that an existing one be amended or deleted. The request shall be submitted to the  
6           **council**, in writing, and contain detailed information to support the request as set forth in  
7           section 11-201-16, **HAR**, environmental **council** rules.<sup>276</sup>

8  
9   [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

10

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<sup>274</sup> Source: § 11-200-8(b), HAR (1996).

<sup>275</sup> Housekeeping.

<sup>276</sup> Source: § 11-200-8(c), HAR (1996).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-16A Exemption Lists<sup>277</sup>

- 2 (a) Each **agency** through time and experience, [~~shall~~] **may**<sup>278</sup> develop its own list **consistent**  
3 **with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of**  
4 **[specific]<sup>279</sup> types of actions [which fall within the exempt classes as long as these lists**  
5 **are consistent with both the letter and intent expressed in these exempt classes and**  
6 **chapter 343, HRS] that the agency considers to be included within the exempt general**  
7 **types listed in section 11-200A-15A.**<sup>280/281</sup>  
8  
9 (b) These lists and any amendments to the lists shall be submitted to the **council** for review  
10 and **concurrence**. The lists shall be reviewed periodically by the **council**.<sup>282/283/284</sup>  
11  
12 (c) **An agency may use its exemption list to exempt from preparation of an EA specific**  
13 **actions it determines to be included under the types of actions in its list, provided that**  
14 **the agency fulfills the exemption notice requirements set forth in section 11-200A-17A**  
15 **of this subchapter and chapter 343, HRS.**<sup>285</sup>

16  
17 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)  
18

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<sup>277</sup> Source: § 11-200-8(d), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted. Subchapter 8A divides 11-200-8, HAR (1996) regarding exemptions into three sections, including this one, and groups them within one subchapter on exemptions.

<sup>278</sup> Acknowledges that agencies are not required to create exemption lists and some may not regularly conduct activities that rise to the level of requiring chapter 343, HRS environmental review. An agency without an exemption list may still apply an exemption by meeting the other requirements of this subchapter.

<sup>279</sup> Deletes "specific" due to the confusion created by its inclusion.

<sup>280</sup> Enables an agency to create an exemption list and requires the agency to submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>281</sup> Source: Source: § 11-200-8(d), HAR (1996).

<sup>282</sup> Requires any agency that creates an exemption list to submit the list to the council for review and concurrence. Lists may include both programs and projects.

<sup>283</sup> All council meetings are subject to the Sunshine Law. Therefore, when exemption lists are submitted for council review and concurrence, the exemption lists are made public and there is an opportunity for the public to attend and provide comments at the meeting regarding the exemption list. The council publishes proposed revisions to exemption lists in the bulletin for thirty days and takes public comment received into consideration when considering concurrence with a proposed revision to an exemption list. Further, the OEQC website has a repository of documents concurred with or reviewed by the council.

<sup>284</sup> Source: Source: § 11-200-8(d), HAR (1996).

<sup>285</sup> Clarifies the purpose of exemption lists and that agencies may exempt both agency actions and applicant actions

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-17A Exemption Notices<sup>286</sup>

2 (a) Each **agency** shall [~~maintain records of~~] **create exemption notices for actions** that it has  
3 found to be exempt from the requirements for preparation of an [~~environmental~~  
4 ~~assessment~~] **EA**. [~~and each~~] **Each agency** shall produce the **exemption notices** for  
5 review upon request **by the public or an agency**.<sup>287/288</sup>

6  
7 (b) Unless consultation and publication are not required under subsection (d), prior to  
8 implementing the action.<sup>289</sup> **agencies** shall consult on the propriety of an exemption and  
9 **publish exemption notices** with the **office** through the filing process set forth in  
10 subchapter 4A.<sup>290/291</sup>

11  
12 (c) For consultation on the propriety of an exemption, an agency shall undertake an analysis  
13 to determine whether the action merits exemption consistent with one or several of the  
14 general types listed in section 11-200A-15A or the agency's exemption list produced in  
15 accordance with section 11-200-16A, and whether significant cumulative impacts or  
16 particularly sensitive environments would make the exemption inapplicable. The agency  
17 shall obtain the advice of other outside agencies or individuals having jurisdiction or  
18 expertise as to the propriety of the exemption. This analysis and consultation shall be  
19 documented in the exemption notice.<sup>292/293</sup>

20  
21  

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<sup>286</sup> Source: § 11-200-8(d), HAR (1996). All language in this section comes from section 11-200-8, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted. Subchapter 8A divides 11-200-8, HAR (1996) regarding exemptions into three sections, including this one, and groups them within one subchapter on exemptions.

<sup>287</sup> Requires an agency to create exemption notices, to maintain the exemption notices on file, and to produce the exemption notices on request. Exemption notices should be prepared prior to undertaking an action, except in the case of an emergency action under section 11-200A-9A.

<sup>288</sup> Source: Source: § 11-200-8(e), HAR (1996).

<sup>289</sup> Indicates that an exemption notice should be prepared, including consultation and publication (unless excepted under this section), prior to implementing the action.

<sup>290</sup> Requires an agency to consult on the propriety of the exemption and to publish the exemption notice, including documentation of the consultation, in the bulletin. Directs reader to the filing section for filing process requirements. Provides that in order to meet any requirement to "publish the exemption notice", an agency shall submit the exemption notice to the office for publication in the bulletin. The bulletin serves as a central source for the public to receive information regarding agency determinations and other environmental review, including published exemption notices.

<sup>291</sup> Source: Proposed language in § 11-200-8(f), HAR, see v0.2.

<sup>292</sup> Enunciates the requirements for consultation on the propriety of an exemption prior to determining that an action is exempt and documentation requirements of the consultation, when applicable, in the exemption notice.

<sup>293</sup> This language was originally proposed in section 11-200-8(h), HAR in v0.2 and builds upon the requirement to obtain the advice of other outside agencies or individuals having jurisdiction as to the propriety of an exemption under section 11-200-8(a), HAR (1996).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (d) Consultation regarding and publication of an **exemption notice** is not required when:  
2 (1) The **agency** has created an **exemption list** pursuant to section 11-200A-16A:  
3 (2) The **council** has concurred with the **agency's exemption list** no more than  
4 seven years before the **agency** implements the **action** or authorizes an **applicant**  
5 to implement the **action**:  
6 (3) The **action** is consistent with the letter and intent of the **agency's exemption list**:  
7 and  
8 (4) The **action** does not have any potential, individually or **cumulatively**, to produce  
9 **significant impacts**.<sup>294</sup>

10

11 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

12

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<sup>294</sup> Provides an exception to the consultation and publication requirement when an agency's exemption list has been concurred to by the council within seven years of when the proposed action is to be initiated, when the proposed action is clearly within scope of the agency's exemption list, and the action does not have any potential to produce significant impacts.

## 1 Subchapter 9A Environmental Assessments

- 2 • This subchapter provides direction to an agency when it has decided that an EA is the  
3 appropriate level of review.
- 4 • Section 18A describes the early consultation requirement, level of detail required relative  
5 to the action being a project or program and the nature of what is proposed, and the  
6 contents requirements for a draft EA.
- 7 • Section 19A describes the content requirements for an anticipated FONSI based on a  
8 draft EA.
- 9 • Section 20A describes the public review and response to comments requirements for a  
10 draft EA.
- 11 • Section 21A describes the contents of a final EA.
- 12 • Section 22A describes the determination to issue an EISPN or FONSI and the FONSI  
13 content requirements.

### 14 § 11-200A-18A Preparation and Contents of a Draft Environmental 15 Assessment<sup>295</sup>

- 16 (a) A proposing agency shall, or an approving agency shall require an applicant to [Seek]  
17 seek, at the earliest practicable time, the advice and input of the county agency  
18 responsible for implementing the county's general plan for each county in which the  
19 proposed action is to occur, and consult with other agencies having jurisdiction or  
20 expertise as well as those citizen groups and individuals [which] that the proposing  
21 agency or applicant reasonably believes [tø] may<sup>296</sup> be affected.<sup>297</sup>
- 22
- 23 (b) The scope of the draft EA may vary with the scope of the proposed action and its  
24 impact, taking into consideration whether the action is a project or a program.<sup>298</sup> Data  
25 and analyses in a draft EA shall be commensurate with the importance of the impact,  
26 and less important material may be summarized, consolidated, or simply referenced. A  
27 draft EA shall indicate at appropriate points in the text any underlying studies, reports.

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<sup>295</sup> Formerly § 11-200-10, HAR (1996), which addressed the contents of both a draft and final EA. The provisions related to the contents a draft EA are retained here. Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from section 11-200-10, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>296</sup> Housekeeping.

<sup>297</sup> Source: § 11-200-9(a)(1) and §11-200-9(b)(1), HAR (1996).

<sup>298</sup> Version 0.3 proposes definitions for project and program, and this section provides how the distinction between a project and program influences the style of the document and the breadth and specificity of analysis and information contained therein.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 and other information obtained and considered in preparing the **draft EA**, including cost  
2 benefit analyses and reports required under other legal authorities.<sup>299/300</sup>  
3  
4 (c) The level of detail in a **draft EA** may be more broad for **programs** or components of a  
5 **program** for which site-specific **impacts** are not discernible, and shall be more specific  
6 for components of the **program** for which site-specific, **project-level impacts** are  
7 discernible. A **draft EA** for a **program** may, where necessary, omit evaluating issues that  
8 are not yet ready for decision at the **project**<sup>301</sup> level. Analysis of the **program** may be  
9 based on conceptual information in some cases and may discuss in general terms the  
10 constraints and sequences of events likely to result in any narrowing of future options. It  
11 may present and analyze in general terms hypothetical scenarios that are likely to  
12 occur.<sup>302/303</sup>  
13  
14 (d) A **draft EA** shall contain, but not be limited to, the following information:<sup>304</sup>  
15 (1) Identification of the **applicant** or **proposing agency**;<sup>305</sup>  
16 (2) For **applicant actions**,<sup>306</sup> [Identification] identification of the **approving agency** [;  
17 if applicable];<sup>307</sup>  
18 (3) List of all **required**<sup>308</sup> **permits** and **approvals** (State, federal, county) [required]  
19 and, for **applicants**, identification of which **approval** necessitates chapter 343,  
20 HRS, environmental review<sup>309, 310</sup>

<sup>299</sup> Paragraph (b) is a modification of section 11-200-19, HAR (1996) to apply the style guidelines for an EIS to an EA. It mirrors the language included in the proposed 11-200A-24A for the contents of a draft EIS, and provides that the scope and specificity within an EA will be commensurate with the scope of the action and the degree of specificity to which impacts are discernible at the time of preparation.

<sup>300</sup> Because a final EA is a draft EA revised to incorporate responses to comments, this subsection also applies to the style and breadth and specificity of analysis and information contained in a final EA.

<sup>301</sup> Clarifies that the programmatic EA may omit issues that are not ripe for discussion at a more narrow scale. In the case of such an omission, a subsequent project may require its own chapter 343, HRS determination. Proposed subchapter 7A assists with understanding this situation.

<sup>302</sup> Distinguishes between the level of detail and style of assessment for programs, which may be more broad and conceptual in nature and that for projects, which are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of segmentation and acknowledges the tension between earliest practicable time to begin environmental review with project specificity. This paragraph mirrors the proposed paragraph in section 11-200A-24A regarding contents of a draft EIS.

<sup>303</sup> Because a final EA is a draft EA revised to incorporate responses to comments, this subsection also applies to the style and breadth and specificity of analysis and information contained in a final EA.

<sup>304</sup> Source: § 11-200-10, HAR (1996).

<sup>305</sup> Source: § 11-200-10(1), HAR (1996).

<sup>306</sup> Clarifies when identification of the approving agency is necessary.

<sup>307</sup> Source: § 11-200-10(2), HAR (1996).

<sup>308</sup> Housekeeping. Moves the word required from the end of the clause to before the word "permits".

<sup>309</sup> Adds identification of the approval that combined with a trigger from 343-5 requires an applicant to undergo chapter 343, HRS review.

<sup>310</sup> Source: § 11-200-10(11), HAR (1996).

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (4) Identification of **agencies**, citizen groups, and individuals consulted in [making]  
2 preparing<sup>311</sup> the **draft [assessment] EA**.<sup>312</sup>  
3 (5) General description of the **action's** technical, economic, social, **cultural**<sup>313</sup> and  
4 environmental characteristics.<sup>314</sup>  
5 (6) Summary description of the affected **environment**, including suitable and  
6 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
7 Floodway Boundary Maps, or United States Geological Survey topographic maps;  
8 (7) Identification and [summary] **analysis**<sup>315</sup> of **impacts** and alternatives considered;  
9 (8) Proposed mitigation measures.<sup>316</sup>  
10 (9) **Agency or approving agency** [determination or, for draft environmental  
11 assessments only an] anticipated determination, including findings and reasons  
12 supporting the anticipated **FONSI**, if applicable; and<sup>317</sup>  
13 (10) Written comments and responses to the comments [under] **received and made**  
14 **pursuant to**<sup>318</sup> the early consultation provisions of [~~sections 11-200-9(a)(1), 11-~~  
15 ~~200-9(b)(1), or 11-200-15,~~ **subsection (a)** and statutorily prescribed public review  
16 periods.<sup>319</sup>  
17  
18 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)  
19

---

<sup>311</sup> Uses more accurate language (“preparing” rather than “making”) that is consistent with language in the rules.

<sup>312</sup> Source: § 11-200-10(3), HAR (1996).

<sup>313</sup> Aligns provision with content requirement of a draft EIS.

<sup>314</sup> Source: § 11-200-10(4), HAR (1996).

<sup>315</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide enough information to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

<sup>316</sup> Source: § 11-200-10(7), HAR (1996).

<sup>317</sup> Source: merges § 11-200-10(8) and (9), HAR (1996).

<sup>318</sup> Housekeeping.

<sup>319</sup> Source: § 11-200-10(12), HAR (1996).

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-19A Notice of Determination for Draft Environmental  
2 Assessments<sup>320</sup>

3 (a) After:<sup>321</sup>

4 (1) ~~[preparing]~~ **Preparing, or causing to be prepared,**<sup>322</sup> ~~[an environmental~~  
5 ~~assessment] a draft EA;~~ ~~[and]~~<sup>323</sup>

6 (2) ~~[reviewing]~~ **Reviewing any** public and **agency** comments, ~~[if any,]~~ **and**<sup>324</sup>

7 (3) ~~[applying]~~ **Applying** the significance criteria in section ~~[11-200A-12]~~ **11-200A-**  
8 **12A[1];**

9 **if the proposing agency or the approving agency anticipates that the proposed action**  
10 **is not likely to have a significant effect, [it] the proposing agency or approving**  
11 **agency**<sup>325</sup> **shall issue a notice of [determination which shall be]**<sup>326</sup> **an anticipated**  
12 **[negative declaration] FONSI** subject to the public review provisions of section ~~[11-200-~~  
13 ~~9-4]~~ **11-200A-20A.**<sup>327</sup>

14  
15 (b) **The proposing agency or approving agency shall [also] file [such] the**<sup>328</sup> **notice of**  
16 **anticipated determination when applicable**<sup>329</sup> **and supporting draft EA**<sup>330</sup> **with the office**  
17 **as early as possible in accordance with subchapter 4A**<sup>331</sup> **after the determination is made**  
18 **pursuant to and in accordance with [section 11-200-9] this subchapter**<sup>332</sup> **and the**  
19 **requirements in subsection (c).** ~~[along with four copies of the supporting environmental~~  
20 ~~assessment. In addition to the above, the anticipated negative declaration determination~~  
21 ~~for any applicant action shall be mailed to the requesting applicant by the approving~~

<sup>320</sup> Formerly § 11-200-11.1, HAR (1996). Due to the level of proposed amendments, formatting in this section follows the conventions for “moved” language. Language that has been added is highlighted and language that is from section 11-200-11.1, HAR (1996) or has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>321</sup> Breaks out three conditions from § 11-200-11.1(a) into three items and capitalizes each of the numbered items to make the language clearer.

<sup>322</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>323</sup> Housekeeping. Specifies draft EA.

<sup>324</sup> Housekeeping.

<sup>325</sup> Housekeeping.

<sup>326</sup> Removes redundant language.

<sup>327</sup> Source: § 11-200-11.1, HAR (1996).

<sup>328</sup> Housekeeping.

<sup>329</sup> Clarifies that the FONSI is an anticipated determination.

<sup>330</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>331</sup> Incorporates filing requirements from subchapter 4A.

<sup>332</sup> Housekeeping.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 agency.]<sup>333</sup> For applicant actions, the approving agency shall also send the anticipated  
2 FONSI to the applicant.<sup>334/335</sup>

3  
4 (c) The notice of an anticipated FONSI determination shall [indicate] include in a concise  
5 manner:

- 6 (1) Identification of the<sup>336</sup> [applicant or] proposing agency or applicant<sup>337</sup>;  
7 (2) Identification of the approving agency or<sup>338</sup> accepting authority;  
8 (3) [Brief] A brief<sup>339</sup> description of the<sup>340</sup> [proposed] action;  
9 (4) [Determination] The anticipated FONSI<sup>341</sup>;  
10 (5) Reasons supporting the<sup>342</sup> anticipated FONSI [determination]; and  
11 (6) [Name] The name<sup>343</sup>, title email address, physical<sup>344</sup> address, and phone number  
12 of [a contact person] an individual representative of the proposing agency or  
13 applicant who may be contacted for further information.<sup>345/346</sup>

14  
15 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

16

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<sup>333</sup> Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted.

<sup>334</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>335</sup> Source: § 11-200-11.1(a)

<sup>336</sup> Housekeeping.

<sup>337</sup> Parallels similar sentences in the regulations that reference the “proposing agency” first and the “applicant” second.

<sup>338</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>339</sup> Housekeeping.

<sup>340</sup> Housekeeping.

<sup>341</sup> Housekeeping.

<sup>342</sup> Housekeeping.

<sup>343</sup> Housekeeping.

<sup>344</sup> Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

<sup>345</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant’s organization who can provide answers.

<sup>346</sup> Source of (c)(1)-(6): modified § 11-200-11.1(c)(1)-(6).

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-20A Public Review & Response Requirements for Draft  
2 Environmental Assessments for Anticipated Findings of No  
3 Significant Impact & Addenda to Draft Environmental  
4 Assessments<sup>347</sup>

- 5 (a) This section shall apply only if a **proposing agency** or an **approving agency** anticipates  
6 a ~~[negative declaration]~~ **FONSI** determination for a proposed **action**<sup>348</sup> and ~~[that]~~ **the**  
7 **proposing agency** **or the applicant proposing the action**<sup>349</sup> has completed the **draft EA**  
8 requirements of ~~[section 11-200-7(a) paragraphs (1), (2), (3), (4), (5), (6) and (7), or~~  
9 ~~section 11-200-9(b), paragraphs (1), (2), (3), (4), (5) and (6), as appropriate]~~ **sections 11-**  
10 **200A-18A and 11-200-19A**.<sup>350</sup>  
11  
12 (b) ~~[The period for public review and for submitting written comments for both agency actions~~  
13 ~~and applicant actions shall begin as of the initial issue date that notice of availability of the~~  
14 ~~draft environmental assessment was published in the periodic bulletin and shall continue~~  
15 ~~for a period of thirty days.]~~ **Unless mandated otherwise by statute**<sup>351</sup>, **the period for public**  
16 **review and for submitting written comments shall be thirty days**<sup>352</sup> **from the date of**  
17 **publication of the draft EA in the bulletin**. Written comments ~~[to the proposing agency or~~  
18 ~~approving agency, whichever is applicable, with a copy of the comments to the applicant~~  
19 ~~or proposing agency]~~ shall be received **by**<sup>353</sup> or postmarked to the **proposing agency** or  
20 **approving agency** **and applicant**<sup>354</sup> ~~[;]~~ within the thirty-day period. Any comments  
21 outside of the thirty-day period need not be ~~[considered or]~~<sup>355</sup> responded to nor  
22 considered **in the final EA**.  
23  
24 (c) For **agency actions**, the **proposing agency** **shall, and for applicant actions, the**  
25 **applicant** shall **;** respond in writing to all comments received or postmarked during the

<sup>347</sup> Formerly § 11-200-9.1, HAR (1996). All language in this section comes from section 11-200-9.1, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>348</sup> If an agency does not anticipate a FONSI, then it will likely move to or authorize an applicant to directly move to an EIS. This requires the approving agency to use its judgment and wisdom. Although an agency may anticipate a FONSI, the FONSI may not be issued until an EA is completed.

<sup>349</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA.

<sup>350</sup> Deletes unnecessary references because in v0.3 the contents of a draft EA have been merged into one section.

<sup>351</sup> Acknowledges that the public review period may be altered for certain actions by statute. For example, the development or expansion of forensic facilities of the department of health or in-state correctional facilities have 60-day comment periods for draft EAs (and EISs), per sections 334-2.7 and 353-16.35, HRS, respectively.

<sup>352</sup> Refer to proposed § 11-200A-3A, Computation of Time for calculating thirty days.

<sup>353</sup> Stylistic change.

<sup>354</sup> Reflects change that the applicant, rather than the approving agency, prepares the EA.

<sup>355</sup> Stylistic change.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 ~~[thirty-day]~~ **statutorily mandated**<sup>356</sup> review period, incorporate comments **into the final**  
2 **EA**<sup>357</sup> as appropriate,<sup>358</sup> and ~~[append]~~ **include** the comments and responses in the final  
3 ~~[environmental assessment]~~ **EA**. ~~[Each response shall be sent directly to the person~~  
4 ~~commenting, with copies of the response also sent to the office.]~~ **If a number of**  
5 **comments are identical or very similar, the proposing agency or applicant may group**  
6 **the comments and prepare a single standard response for each group. When grouping**  
7 **comments, the name of each commenter, when known, shall be included along with the**  
8 **grouped response.**<sup>359</sup> **One representative copy of comments that are identical or very**  
9 **similar may be included in the final EA with a list of the names of each commenter, when**  
10 **known, that submitted the identical comments rather than reproducing each individual**  
11 **comment.**<sup>360</sup> **All individual comments and representative copies of identical or very similar**  
12 **comments must be included in the final EA regardless of whether the agency or**  
13 **applicant believes the comments merit individual discussion in the body of the final**  
14 **EA.**<sup>361</sup>  
15  
16 ~~[(d)]~~ ~~[For applicant actions, the applicant shall respond in writing to all comments received~~  
17 ~~or postmarked during the thirty-day review period and the approving agency shall~~  
18 ~~incorporate or append the comments and responses in the final environmental~~  
19 ~~assessment. Each response shall be sent directly to the person commenting with a copy~~  
20 ~~to the office. A copy of each response shall be sent to the approving agency for its timely~~  
21 ~~preparation of a determination and notice thereof pursuant to sections 11-200-9(b) and~~  
22 ~~11-200-11.1 or 11-200-11.2.]~~<sup>362/363</sup>

<sup>356</sup> Acknowledges that other statutes may require comment periods of varying lengths.

<sup>357</sup> Clarifies that the comments are included in the final EA.

<sup>358</sup> Housekeeping.

<sup>359</sup> Allows agencies and applicants to respond within EAs and EISs to the issues raised within comment letters without sending letters directly to each commenter. This is intended to modernize and simplify the environmental review process. Commenters must still be identified in the response within the EA or EIS. The widespread availability of electronic documents to commenters relieves the necessity of sending individual letters to commenters to ensure that they receive notification that their comment has been considered and responded to.

<sup>360</sup> Reduces the burden on proposing agencies and applicants in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately. Applies specifically to form letters and petitions.

<sup>361</sup> Because the responses are included in the final EA, it is not necessary to send an individual response letter to each person who comments. The requirement to send a response to every individual person commenting can be burdensome without a benefit that cannot be satisfied by notifying the person via publication of the final EA. This language is drawn from the CEQ 40 questions, #29a and aligns with NEPA practice, which allows grouping of identical or similar comments and providing one response that covers the issues raised in identical or similar comments. Because individual responses would no longer be sent, the requirement for office to receive a copy of the response is no longer relevant.

<sup>362</sup> Under Act 192 (2012), applicants prepare their own documents, so the timely preparation of an EA or EIS by the approving agency is no longer applicable.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1  
2 [(e)](d) An **addendum** document to a **draft** [environmental assessment] **EA** shall reference the  
3 original **draft** [environmental assessment] **EA** it attaches to and shall comply with all  
4 applicable **filing**, public review and comment requirements set forth in [sections 11-200-3  
5 and 11-200-9] **subchapters 4A and 9A**<sup>364</sup>.  
6  
7 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-3, 343-5, 343-6) (Imp: HRS §§ 343-3, 343-5, 343-6)  
8

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<sup>363</sup> This paragraph is merged into the preceding paragraph (c). Applicants and agencies must meet the same criteria when responding to public comments. Therefore, this paragraph is deleted and the paragraph outlining agency requirements is amended to include applicants

<sup>364</sup> Updates references to filing and publication of the addendum and public review of draft environmental assessments.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 §11-200A-21A Contents of a Final Environmental Assessment<sup>365</sup>

2 ~~[The proposing agency or approving agency shall prepare any draft or final environmental~~  
3 ~~assessment of each proposed action and determine whether the anticipated effects constitute a~~  
4 ~~significant effect in the context of chapter 343, HRS, and section 11-200-12. The environmental~~  
5 ~~assessment]~~<sup>366</sup> **A final EA** shall contain, but not be limited to, the following information:

- 6 (1) Identification of **applicant** or **proposing agency**;
- 7 (2) Identification of **approving agency**, if applicable;
- 8 (3) Identification of agencies, citizen groups, and individuals consulted in ~~[making]~~  
9 **preparing**<sup>367</sup> the ~~[assessment]~~ **EA**;
- 10 (4) General description of the **action's** technical, economic, social, **cultural**<sup>368</sup> and  
11 environmental characteristics;
- 12 (5) Summary description of the affected **environment**, including suitable and  
13 adequate regional, location and site maps such as Flood Insurance Rate Maps,  
14 Floodway Boundary Maps, or United States Geological Survey topographic maps;
- 15 (6) Identification and ~~[summary]~~ **analysis**<sup>369</sup> of **impacts** and alternatives considered;
- 16 (7) Proposed mitigation measures;
- 17 (8) **The [Agency] agency determination and the findings and reasons supporting the**  
18 **determination** ~~[or, for draft environmental assessments only, an anticipated~~  
19 ~~determination]~~<sup>370</sup>;
- 20 ~~[(9)] [Findings and reasons supporting the agency determination or anticipated~~  
21 ~~determination;]~~<sup>371</sup>
- 22 ~~[(10)] [Agencies to be consulted in the preparation of the EIS, if an EIS is to be~~  
23 ~~prepared];~~
- 24 (9) List of all **required**<sup>372</sup> permits and **approvals** (State, federal, county) ~~[required]~~  
25 **and, for applicants, identification of which discretionary permit necessitates**  
26 **chapter 343, HRS, environmental review**<sup>373</sup>; and

<sup>365</sup> Formerly § 11-200-10, HAR (1996). All language in this section comes from section 11-200-10, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>366</sup> Other sections of this chapter set forth the requirements for when an EA shall be required and do not need to be repeated here. This section specifies what a draft and final EA must include when such documents are required.

<sup>367</sup> Uses more accurate language (“preparing” rather than “making”) that is consistent with language in the rules.

<sup>368</sup> Aligns provision with content requirement of a draft EIS.

<sup>369</sup> Focuses on analyzing instead of summarizing impacts. The use of this word should not be understood to mean a lengthy discussion. It means that the impact discussion section should identify an impact and provide a discussion detailed enough to support a conclusion. Summaries tend to be assertions of impact and the degree of significance without presenting a supporting argument.

<sup>370</sup> Stylistic change to improve clarity and removes reference to draft EA requirements. Merges requirement to include both the determination and the reasons supporting the determination.

<sup>371</sup> Merged into preceding subparagraph (8).

<sup>372</sup> Housekeeping. Moves the word required from the end of the clause to before the word “permits”.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (10) Written comments and responses to the comments [~~under~~ **received pursuant**  
2 **to**<sup>374</sup> the early consultation provisions [~~of sections 11-200-9(a)(1), 11-200-9(b)(1),~~  
3 ~~or 11-200-15~~], and statutorily prescribed public review periods.

4

5 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

6

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<sup>373</sup> Adds identification of the approval that combined with a trigger from 343-5 requires an applicant to undergo chapter 343, HRS review.

<sup>374</sup> Housekeeping.

WORKING DRAFT - NOT FINAL - FOR DISCUSSION PURPOSES

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-22A Notice of Determination for Final Environmental  
2 Assessments<sup>375</sup>

- 3 (a) After:<sup>376</sup>
- 4 (1) [~~preparing~~] **Preparing, or causing to be prepared,**<sup>377</sup> a final [environmental  
5 assessment] **EA,**
- 6 (2) [~~reviewing~~] **Reviewing any** public and **agency** comments, [if any,] **and**<sup>378</sup>
- 7 (3) [~~applying~~] **Applying** the significance criteria in section [11-200-12] **11-200A-12A**<sup>379</sup>,  
8 the **proposing agency** or the **approving agency** shall issue [one of the following  
9 notices] **a notice**<sup>380</sup> of [determination] **a FONSI or EISPN**<sup>381</sup> in accordance with [section  
10 11-200-9(a) or 11-200-9(b)] **subchapter 9A**<sup>382</sup>, and file the notice with the **office in**  
11 **accordance with subchapter 4A.**<sup>383</sup> [~~addressing the requirements in subsection (c), along~~  
12 ~~with four copies of the supporting final environmental assessment, provided that in~~  
13 ~~addition to the above, all notices of determination for any applicant action shall be mailed~~  
14 ~~to the requesting applicant by the approving agency.]~~<sup>384</sup> **For applicant actions, the**  
15 **approving agency shall issue a determination within thirty days of receiving the final**  
16 **EA.**<sup>385</sup>
- 17
- 18 (b) [~~Negative declaration~~] **FONSI.** If the **proposing agency** or **approving agency**  
19 determines that a proposed **action** is not likely to have a **significant effect**, it shall issue  
20 a notice of [~~determination which shall be~~] a [~~negative declaration,~~] **FONSI.** [~~and the~~  
21 ~~proposing agency or approving agency shall file such notice with the office as early as~~  
22 ~~possible after the determination is made pursuant to and in accordance with section 11-~~  
23 ~~200-9~~<sup>386</sup>.
- 24

<sup>375</sup> Formerly § 11-200-11.2, HAR (1996). All language in this section comes from section 11-200-11.2, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>376</sup> Housekeeping. Breaks out three conditions into three items and capitalizes each of the numbered items to make the language clearer.

<sup>377</sup> Aligns the process with Act 172 (2012), Direct-to-EIS, which requires the applicant to prepare documents instead of the approving agency.

<sup>378</sup> Housekeeping.

<sup>379</sup> Updates section reference.

<sup>380</sup> Housekeeping.

<sup>381</sup> Clarifies which of two determinations is to be issued.

<sup>382</sup> Updates reference to subchapter 9A, which encompasses the process and requirements for preparation of an environmental assessment previously included in sections 11-200-9(a) and 11-200-9(b), HAR (1996).

<sup>383</sup> Directs to the subchapter on filing requirements.

<sup>384</sup> This requirement is now addressed in subchapter 4A, Filing and Publication.

<sup>385</sup> Source: modified § 11-200-9(b)(8), HAR (1996).

<sup>386</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (c) [~~Environmental impact statement preparation notice~~] **EISPN**. If the **proposing agency** or  
2 **approving agency** determines that a proposed **action** may have a **significant effect**, it  
3 shall issue a notice of [~~determination which shall be~~] an [~~environmental impact statement~~  
4 ~~preparation notice~~] **EISPN** [~~and such notice shall be filed as early as possible after the~~  
5 ~~determination is made pursuant to and in accordance with section 11-200-9~~]<sup>387</sup>.  
6
- 7 (d) **The proposing agency or approving agency shall file in accordance with subchapter**  
8 **4A the notice and the supporting final EA with the office as early as possible after the**  
9 **determination is made, addressing the requirements in subsection (e).**<sup>388</sup> **For applicant**  
10 **actions, the approving agency shall send the notice of determination for an EISPN or**  
11 **FONSI to the applicant.**<sup>389</sup>  
12
- 13 [(e)] [~~The office shall publish the appropriate notice of determination in the periodic bulletin~~  
14 ~~following receipt of the documents in subsection (a) by the office in accordance with~~  
15 ~~section 11-200-3.~~]<sup>390</sup>  
16
- 17 (e) The notice of [~~determination~~] a **FONSI**<sup>391</sup> shall indicate in a concise manner:  
18 (1) Identification of **the**<sup>392</sup> **applicant or proposing agency**;  
19 (2) Identification of **the approving agency or**<sup>393</sup> **accepting authority**;  
20 (3) [~~Brief~~] **A brief**<sup>394</sup> description of **the**<sup>395</sup> proposed **action**;  
21 (4) [~~Determination~~] **The determination**<sup>396</sup>;  
22 (5) Reasons supporting **the**<sup>397</sup> determination; and  
23 (6) [~~Name~~] **The name**<sup>398</sup>, **title, contact information, including the email address,**  
24 **physical**<sup>399</sup> address, and phone number of [~~a contact person~~] **an individual**

<sup>387</sup> Removes this language from the paragraph and adds it as part of the new proposed paragraph D.

<sup>388</sup> Consolidates language from above paragraphs to reduce redundancy. Simplifies the submittal requirement to one copy of the notice of determination and one copy of the final EA. Electronic documentation can be submitted. Filing and publication requirements are included in subchapter 4A.

<sup>389</sup> Clarifies that approving agencies have a responsibility to send their determination to the applicant directly, but not necessarily via postal mail (electronic distribution would also be acceptable).

<sup>390</sup> Deletes language that is now included in subchapter 4A on Filing and Publication.

<sup>391</sup> Separates the notice of determination for a FONSI from an EISPN. The EISPN details are now listed in section 11-200A-23A.

<sup>392</sup> Housekeeping.

<sup>393</sup> Adds approving agency for the case of applicants because accepting authority only is applicable for EISs and, in the case of applicant EISs, the accepting authority and approving agency are the same.

<sup>394</sup> Housekeeping.

<sup>395</sup> Housekeeping.

<sup>396</sup> Housekeeping.

<sup>397</sup> Housekeeping.

<sup>398</sup> Housekeeping.

<sup>399</sup> Modernizes the requirements to include email as a requirement for contact information. Most communication is done by email so providing that is just as important as a phone number or physical mail address.

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1 representative of the proposing agency or applicant who may be contacted for  
2 further information.<sup>400/401</sup>

3 The notice of determination for an EISPN shall be prepared pursuant to section 11-200A-  
4 23A.<sup>402</sup>

5  
6 ~~[(d)]—[When an agency withdraws a determination pursuant to its rules, the agency shall~~  
7 ~~submit to the office a written letter informing the office of its withdrawal. The office shall~~  
8 ~~publish notice of agency withdrawals in accordance with section 11-200-3.]~~<sup>403</sup>

9  
10 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

11

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<sup>400</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant's organization who can provide answers.

<sup>401</sup> Creates a standard set of content for an EISPN determination no matter the result of an EA or going directly to preparing the EIS.

<sup>402</sup> Refers to the EISPN section of the rules for what to include in an EISPN. This addresses direct-to-EIS concerns for the EISPN so that no matter how one arrives at an EIS, the content requirement of the EISPN is identical.

<sup>403</sup> Deletes language that has been moved to the Filing and Publication Requirements detailed in section 11-200A-5A.

## 1 Subchapter 10A Environmental Impact Statements

- 2 • This subchapter provides direction to an agency when it has decided that an EIS is the
- 3 appropriate level of review. It breaks up the steps into separate sections.
- 4 • Section 23A describes the contents of an EISPN, early consultation requirement, the EIS
- 5 public scoping meeting, and the comment period following the publication of an EISPN.
- 6 • Section 24A describes the content requirements for a draft EIS, the detail required
- 7 relative to the action being a project or program and the nature of what is proposed, and
- 8 the response requirements to comments received during the thirty-day scoping period.
- 9 • Section 25A describes the public review requirements for a draft EIS.
- 10 • Section 26A describes the response to comments received on a draft EIS.
- 11 • Section 27A describes the content requirements for a final EIS.
- 12 • Section 28A describes the criteria for an acceptance determination and steps following an
- 13 acceptance or nonacceptance determination.

### 14 § 11-200A-23A Consultation Prior to Filing a Draft Environmental

### 15 Impact Statement<sup>404</sup>

- 16 (a) An EISPN, including one resulting from an agency authorizing the preparation of an EIS
- 17 without first requiring an EA, shall indicate in a concise manner:
- 18 (1) Identification of the proposing agency or applicant;
  - 19 (2) Identification of the accepting authority;
  - 20 (3) List of all required permits and approvals (State, federal, county) and, for
  - 21 applicants, identification of which approval necessitates chapter 343, HRS,
  - 22 environmental review<sup>405/406</sup>;
  - 23 (3) The determination to prepare an EIS<sup>407</sup>;
  - 24 (4) Reasons supporting the determination to prepare an EIS<sup>408</sup>;
  - 25 (5) A description of the proposed action and its location;
  - 26 (6) A description of the affected environment and include regional, location, and site
  - 27 maps;
  - 28 (7) Possible alternatives to the proposed action;

<sup>404</sup> Formerly § 11-200-15, HAR (1996). All language in this section comes from section 11-200-15, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved and included from another section of chapter HAR 11-200 (1996) is underlined but not highlighted.

<sup>405</sup> Adds identification of permits and approvals, and for applicants which approval that combined with a trigger from section 343-5, HRS requires an applicant to undergo environmental review.

<sup>406</sup> This is a requirement in preparation of an EA. Because an agency may begin with or authorize an applicant to begin with an EISPN without preparation of an EA, to ensure that the public and decision makers are provided this information it is included as a content requirement of an EISPN.

<sup>407</sup> Distinguishes “the determination” from other determinations, such as a FONSI.

<sup>408</sup> Distinguishes “the determination” from other determinations, such as a FONSI.

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- 1 (8) The proposing agency's or applicant's proposed scoping process, including  
2 when and where the EIS public scoping meeting or meetings will be held; and  
3 (9) The name, title, contact information, including the email address, physical  
4 address, and phone number of an individual representative of the proposing  
5 agency or applicant who may be contacted for further information.<sup>409/410</sup>  
6  
7 (b) In the preparation of a draft **EIS, proposing agencies** and **applicants** shall consult all  
8 appropriate **agencies**, ~~[noted in section 11-200-10(10), and other]~~ including the county  
9 agency responsible for implementing the county's general plan for each county in which  
10 the proposed action is to occur and agencies having jurisdiction or expertise, as well as  
11 those citizen groups, and concerned individuals ~~[as noted in sections 11-200-9 and 11-~~  
12 ~~200-9.4]~~ that the proposing agency reasonably believes to be affected.<sup>411</sup> To this end,  
13 **agencies** and **applicants** shall endeavor to develop a fully acceptable draft<sup>412</sup> **EIS** prior  
14 to the time the draft<sup>413</sup> **EIS** is filed with the **office**, through a full and complete consultation  
15 process, and shall not rely solely upon the review process to expose environmental  
16 concerns.  
17  
18 (c) Upon publication of ~~[a preparation notice]~~ an EISPN in the **periodic bulletin**, agencies,  
19 groups, or individuals shall have a period of thirty days from the initial ~~[issue]~~  
20 publication<sup>414</sup> date ~~[in which to request to become a consulted party and]~~<sup>415</sup> to make  
21 written comments regarding the environmental **effects** of the proposed **action**. ~~[Upon~~  
22 ~~written request by the consulted party and upon good cause shown,]~~ With good cause,  
23 the **approving agency** or **accepting authority** may extend the period for comments for a  
24 period not to exceed thirty additional<sup>416</sup> days.<sup>417</sup> Written comments and responses to the

<sup>409</sup> Clarifies that the name and contact information of a specific individual with authority and knowledge to answer questions regarding the proposed action and its environmental review must be provided. A generic phone line or email address of the proposing agency or applicant without an individual identified will not satisfy this requirement. The person should be knowledgeable to answer questions regarding the action or refer to someone within the agency or applicant's organization who can provide answers.

<sup>410</sup> Subsection (a)(1)-(9) creates a new standard set of content for an EISPN determination that shall be applied regardless of how one arrives at conducting an EIS (e.g., resulting from an EA or directly preparing an EIS).

<sup>411</sup> Deletes reference to the specific sections within HAR chapter 11-200 (1996), and replaces it with the language it references from section 11-200-9(a)(1), HAR (1996).

<sup>412</sup> Clarifies that the document is a draft EIS.

<sup>413</sup> Clarifies that the document is a draft EIS.

<sup>414</sup> Clarifies that thirty-day time period begins upon publication of the EISPN.

<sup>415</sup> Removes the requirement for an individual to become a consulted party to engage directly in providing and receive public documents and determinations related to the proposed action. All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. The requirement to become a consulted party to request an extension to the comment period has been removed.

<sup>416</sup> Clarifies that the days are in addition to the first thirty-day period.

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- 1 substantive comments shall be included in the draft EIS pursuant to section 11-200A-  
2 24A).<sup>418</sup>  
3  
4 (d) ~~[At the discretion of the proposing agency or an applicant, a]~~ **An EIS public scoping**  
5 **meeting** ~~[to receive comments on the final environmental assessment (for the EIS~~  
6 ~~preparation notice determination) setting forth]~~ **addressing** the scope of the draft **EIS**  
7 ~~[may]~~ **shall**<sup>419</sup> be held within the thirty-day public review and comment period in  
8 subsection ~~[(b)]~~ **(c)**<sup>420</sup>, ~~provided that the proposing agency or applicant shall treat oral~~  
9 ~~and written comments received at such a meeting as indicated in subsection (d)]~~<sup>421</sup>.  
10  
11 ~~[(e)]~~ ~~[Upon receipt of the request, the proposing agency or applicant shall provide the~~  
12 ~~consulted party with a copy of the environmental assessment or requested portions~~  
13 ~~thereof and the environmental impact statement preparation notice. Additionally, the~~  
14 ~~proposing agency or applicant may provide any other information it deems necessary.~~  
15 ~~The proposing agency or applicant may also contact other agencies, groups, or~~  
16 ~~individuals which it feels may provide pertinent additional information.]~~<sup>422</sup>  
17  
18 ~~[(d)]~~ ~~[Any substantive comments received by the proposing agency or applicant pursuant to~~  
19 ~~this section shall be responded to in writing and as appropriate, incorporated into the draft~~  
20 ~~EIS by the proposing agency or applicant prior to the filing of the draft EIS with the~~  
21 ~~approving agency or accepting authority. Letters submitted which contain no comments~~  
22 ~~on the projects but only serve to acknowledge receipt of the document do not require a~~  
23 ~~written response. Acknowledgement of receipt of these items must be included in the final~~  
24 ~~environmental assessment or final statement.]~~<sup>423</sup>  
25 ~~[Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)~~

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<sup>417</sup> Allows the approving agency or accepting authority, with good cause, to extend the comment period on its own initiative or at the request of another party. Removes the requirement for a person to become a consulted party to request an extension to the comment period.

<sup>418</sup> Provides that written comments and responses to the comments are required and are to be prepared and included in the draft EIS pursuant to section 11-200A-24A.

<sup>419</sup> Makes the public scoping meeting a requirement and emphasizes that the meeting is about what the scope of the draft EIS should be.

<sup>420</sup> Housekeeping.

<sup>421</sup> Shifts the focus to written comments submitted during the EISPN phase and public scoping meeting and removes the preparer's recording of individual oral comments.

<sup>422</sup> All documents and determinations are now published online and available through the office's website. Proposing agencies and applicants acting within the spirit of chapter 343, HRS, should engage meaningfully with individuals, organizations, and agencies early and often throughout the environmental review process. A proposing agency or applicant does not require authorization from these regulations to consult with or share documents with outside parties.

<sup>423</sup> The contents of this paragraph are now included in section 11-200A-24A regarding Content Requirements of a Draft EIS.

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1 § 11-200A-24A Content Requirements; Draft Environmental  
2 Impact Statement<sup>424</sup>

- 3 (a) The draft **EIS**, at a minimum, shall contain the information required in this section. The  
4 contents shall fully declare the environmental implications of the proposed action and  
5 shall discuss all ~~[relevant and feasible]~~ **reasonably foreseeable**<sup>425</sup> consequences of the  
6 action. In order that the public can be fully informed and that the **agency** can make a  
7 sound decision based upon the full range of responsible opinion on environmental  
8 **effects**, ~~[a statement]~~ **an EIS** shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.<sup>426</sup>
- 10
- 11 (b) ~~[In the developing the EIS preparers shall make every effort to convey the required~~  
12 ~~information succinctly in a form easily understood, both by members of the public and by~~  
13 ~~public decision-makers, giving attention to the substance of the information conveyed~~  
14 ~~rather than to the particular form, or length, or detail of the statement.]~~<sup>427</sup> The scope of  
15 the ~~[statement]~~ **draft EIS**<sup>428</sup> may vary with the scope of the proposed **action** and its  
16 **impact**, taking into consideration whether the **action** is a **project** or a **program**.<sup>429</sup> Data  
17 and analyses in a ~~[statement]~~ **draft EIS**<sup>430</sup> shall be commensurate with the importance of  
18 the **impact**, and less important material may be summarized, consolidated, or simply  
19 referenced. ~~[Statements]~~ A **draft EIS**<sup>431</sup> shall indicate at appropriate points in the text any  
20 underlying studies, reports, and other information obtained and considered in preparing

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<sup>424</sup> Formerly § 11-200-17, HAR (1996). All language in this section comes from section 11-200-17, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>425</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history, and federal guidance to provide clarity on the desired standard.

<sup>426</sup> Source: § 11-200-16, HAR (1996).

<sup>427</sup> This language has been moved to the proposed purpose section, 11-200A-1A, and modified to apply any chapter 343, HRS document.

<sup>428</sup> Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

<sup>429</sup> Version 0.3 proposes definitions for project and program, and this section provides how the distinction between a project and program influences the style of the document and the breadth and specificity of analysis and information contained therein.

<sup>430</sup> Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

<sup>431</sup> Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft **EIS** as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

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1 the [statement] draft EIS<sup>432</sup>, including cost benefit analyses and reports required under  
2 other legal authorities.<sup>433</sup>  
3

4 (c) The level of detail in a draft EIS may be more broad for programs or components of a  
5 program for which site-specific impacts are not discernible, and shall be more specific  
6 for components of the program for which site-specific, project-level impacts are  
7 discernible. A draft EIS for a program may, where necessary, omit evaluating issues that  
8 are not yet ready for decision at the [planning] project<sup>434</sup> level. Analysis of the program  
9 may be based on conceptual information in some cases and may discuss in general  
10 terms the constraints and sequences of events likely to result in any narrowing of future  
11 options. It may present and analyze in general terms hypothetical scenarios that are likely  
12 to occur.<sup>435</sup>  
13

14 (d) The draft EIS shall contain a summary sheet [which] that concisely discusses the  
15 following:

- 16 (1) Brief description of the **action**;
- 17 (2) Significant beneficial and adverse **impacts** (including **cumulative impacts** and  
18 **secondary impacts**);
- 19 (3) Proposed mitigation measures;
- 20 (4) Alternatives considered;
- 21 (5) Unresolved issues; ~~and~~
- 22 (6) Compatibility with land use plans and policies, and listing of permits or  
23 **approvals**[~~;~~]; and<sup>436</sup>
- 24 (7) A list of relevant documents for actions considered in the analysis of the  
25 preparation of the EIS.<sup>437</sup>

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<sup>432</sup> Makes the subsection specific to the preparation of a draft EIS. Because the final EIS is the draft EIS as revised to incorporate substantive comments received during the consultation and review process, this subsection also applied to the style and breadth and specificity of analysis and information contained in a final EIS.

<sup>433</sup> Source: § 11-200-19, HAR (1996). This paragraph is included here and mirrored in proposed section 11-200A-18A, on the preparation and the contents of a draft EA. It provides that the scope and specificity within an EIS will be commensurate with the scope of the action and the degree of specificity to which impacts are discernible at the time of preparation.

<sup>434</sup> Clarifies that the programmatic EIS may omit issues that are not ripe for discussion at a more narrow scale. In the case of such an omission, a subsequent project may require its own chapter 343, HRS determination. Proposed subchapter 7A assists with understanding this situation.

<sup>435</sup> Distinguishes between the level of detail and style of assessment for programs, which may be more broad and conceptual in nature and that for projects, which are site-specific and discrete. Most environmental review focuses on site-specific and discrete projects. By providing language on the level of detail and style of assessment for different types of actions, the rules give direction on how to address projects or programs at risk of being viewed as segmented and acknowledges the trade-off between earliest practicable time to begin environmental review with project specificity. This paragraph mirrors the proposed paragraph in section 11-200A-18A regarding contents of a draft EIS.

<sup>436</sup> Housekeeping.

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- 1  
2 (e) The draft **EIS** shall contain a table of contents.  
3  
4 (f) The draft **EIS** shall contain a separate and distinct section that includes [a statement of]  
5 **the**<sup>438</sup> purpose and need for the proposed **action**.  
6  
7 (g) The draft **EIS** shall contain a [project]<sup>439</sup> description **of the action**<sup>440</sup> [which] **that** shall  
8 include the following information, but need not supply extensive detail beyond that  
9 needed for evaluation and review of the environmental **impact**:  
10 (1) A detailed map (preferably a United States Geological Survey topographic map,  
11 Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a  
12 related regional map;  
13 (2) [~~Statement of objectives~~] **Objectives of the proposed action**<sup>441</sup>;  
14 (3) General description of the **action's** technical, economic, social, **cultural**,<sup>442</sup> and  
15 environmental characteristics;  
16 (4) Use of [public] **state or county**<sup>443</sup> funds or lands for the **action**;  
17 (5) Phasing and timing of **the**<sup>444</sup> **action**;  
18 (6) Summary technical data, diagrams, and other information necessary to [permit]  
19 **enable** an evaluation of potential environmental **impact** by commenting agencies  
20 and the public; and  
21 (7) Historic perspective.  
22  
23  
24  
25  
26  
27

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<sup>437</sup> Clarifies that the list of relevant documents means documents prepared for other chapter 343, HRS, environmental review documents. The documents may be used to identify potential segmentation or cumulative impacts of a proposed action, or for other purposes in preparation of the EIS.

<sup>438</sup> "Statement" is a defined term in this chapter and in chapter 343, HRS, so removed the word because it is used with a different meaning here.

<sup>439</sup> Global change reverting "program or project" back to "action" to avoid any ambiguity as the use of "program or project" over the term "action". Deletes both here and replaces "action" after the word "description".

<sup>440</sup> Part of global change reverting "program or project" back to "action" to avoid any ambiguity as the use of "program or project" over the term "action". Deletes both here and replaces "action" after the word "description".

<sup>441</sup> "Statement" is a defined term in this chapter and in chapter 343, HRS, so removed the word because it is used with a different meaning here.

<sup>442</sup> Adds "cultural" to the characteristics, in line with Act 50 (2000).

<sup>443</sup> Replaces the word "public" with "state or county" to clarify the meaning.

<sup>444</sup> Housekeeping.

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- 1 (h) The draft **EIS** shall describe in a separate and distinct section **reasonable**<sup>445</sup> alternatives  
2 ~~[which] that~~ could attain the objectives of the **action** ~~[regardless of cost, in sufficient detail~~  
3 ~~to explain why they were rejected~~<sup>446</sup>]. The section shall include a rigorous exploration and  
4 objective evaluation of the environmental **impacts** of all such alternative **actions**.<sup>447</sup>  
5 Particular attention shall be given to alternatives that might enhance environmental  
6 quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**,  
7 costs, and risks **of the action**<sup>448</sup>. Examples of alternatives include:  
8 (1) The alternative of no **action**;  
9 (2) Alternatives requiring **actions** of a significantly different nature ~~[which] that~~ would  
10 provide similar benefits with different environmental **impacts**;  
11 (3) Alternatives related to different designs or details of the proposed **actions** ~~[which]~~  
12 ~~that~~ would present different environmental **impacts**;  
13 (4) The alternative of postponing **action** pending further study; and,  
14 (5) Alternative locations for the proposed ~~[project]~~ **action**<sup>449</sup>.  
15 In each case, the analysis shall be sufficiently detailed to allow the comparative  
16 evaluation of the environmental benefits, costs, and risks of the proposed **action** and  
17 each reasonable alternative. **For alternatives that were eliminated from detailed study, the**  
18 **section shall contain a brief discussion of the reasons for not studying those alternatives**  
19 **in detail.**<sup>450</sup> For any **agency actions**, the discussion of alternatives shall include, where  
20 relevant, those alternatives not within the existing authority of the **agency**.  
21  
22 (i) The draft **EIS** shall include a description of the environmental setting, including a  
23 description of the **environment** in the vicinity of the **action**, as it exists before  
24 commencement of the **action**, from both a local and regional perspective. Special  
25 emphasis shall be placed on environmental resources that are rare or unique to the  
26 region and the **action** site (including natural or human-made resources of historic,  
27 **cultural**,<sup>451</sup> archaeological, or aesthetic significance); specific reference to related  
28 **actions**, public and private, existent or planned in the region shall also be included for  
29 purposes of examining the possible overall **cumulative impacts** of such **actions**.  
30 **Proposing agencies and applicants** shall also identify, where appropriate, population  
31 and growth characteristics of the affected area~~[-and]~~ any population and growth

<sup>445</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>446</sup> Incorporates language from NEPA's 40 CFR 1502.14(a): Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

<sup>447</sup> Clarifies that not all alternative actions, only those that are considered by the proposing agency or applicant to be "reasonable" need to be rigorously explored and objectively evaluated.

<sup>448</sup> Clarifies that the effects, costs, and risks are related to the action.

<sup>449</sup> Clarifies that alternative locations should be included for both programs and projects.

<sup>450</sup> Stylistic changes to enhance readability and incorporate language from NEPA's 40 CFR 1502.14(a).

<sup>451</sup> Adds "cultural" in line with Act 50 (2000).

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- 1 assumptions used to justify the **proposed**<sup>452</sup> **action**, and [~~determine~~] **any**<sup>453</sup> secondary  
2 population and growth **impacts** resulting from the proposed **action** and its alternatives. In  
3 any event, it is essential that the sources of data used to identify, qualify, or evaluate any  
4 and all environmental consequences be expressly noted **in the draft EIS**<sup>454</sup>.
- 5
- 6 (j) The draft **EIS** shall include a [~~statement~~] **description**<sup>455</sup> of the relationship of the proposed  
7 **action** to land use **and natural or cultural resource**<sup>456</sup> plans, policies, and controls for the  
8 affected area. Discussion of how the proposed **action** may conform or conflict with  
9 objectives and specific terms of approved or proposed land use **and resource**<sup>457</sup> plans,  
10 policies, and controls, if any, for the area affected shall be included. Where a conflict or  
11 inconsistency exists, the [~~statement~~] **draft EIS**<sup>458</sup> shall describe the extent to which the  
12 **agency** or **applicant** has reconciled its proposed **action** with the plan, policy, or control,  
13 and the reasons why the **agency** or **applicant** has decided to proceed, notwithstanding  
14 the absence of full reconciliation.
- 15
- 16 (k) The draft **EIS** shall also contain a list of necessary **approvals**, required for the **action**,  
17 from governmental agencies, boards, or commissions or other similar groups having  
18 jurisdiction. The status of each identified **approval** shall also be described.
- 19
- 20 (l) The draft **EIS** shall include [~~a statement~~] **an analysis**<sup>459</sup> of the probable **impact** of the  
21 proposed **action** on the **environment**, and **impacts** of the natural or human  
22 **environment** on the [~~project~~] **action**.<sup>460</sup> [~~which~~] **This analysis**<sup>461</sup> shall include  
23 consideration of all phases of the **action** and consideration of all consequences on the  
24 **environment** [~~;~~] **including direct and indirect effects** [~~shall be included~~]<sup>462</sup>. The  
25 interrelationships and **cumulative environmental impacts** of the proposed **action** and  
26 other related [~~projects~~] **actions**<sup>463</sup> shall be discussed in the draft **EIS**. [~~It should be~~  
27 ~~realized~~] **The draft EIS should recognize**<sup>464</sup> that several **actions**, in particular those that  
28 involve the construction of public facilities or structures (e.g., highways, airports, sewer

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<sup>452</sup> Parallels use of “proposed” later in the sentence and distinguishes this “action” from “action” used previously in this paragraph.

<sup>453</sup> Housekeeping.

<sup>454</sup> Housekeeping.

<sup>455</sup> Removes the word “statement,” which is a technical word in chapter 343, HRS, that refers to an EIS. Uses “description” similar to other paragraphs.

<sup>456</sup> Includes natural resource plans such as water management plans.

<sup>457</sup> Includes natural resource plans such as water management plans.

<sup>458</sup> Clarifies that this applies to draft EISs.

<sup>459</sup> Removes the word “statement,” which is a technical word in chapter 343, HRS, that refers to an EIS. Emphasizes that an analysis is important for the impact discussion.

<sup>460</sup> Clarifies that this sentence applies to both projects and programs.

<sup>461</sup> Stylistic change to increase readability.

<sup>462</sup> Housekeeping.

<sup>463</sup> Clarifies that both projects and programs should be considered.

<sup>464</sup> Housekeeping.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 systems, water resource [projects] **actions**, etc.) may well stimulate or induce **secondary**  
2 **effects**. These **secondary effects** may be equally important as, or more important than,  
3 **primary effects**, and shall be thoroughly discussed to fully describe the probable **impact**  
4 of the proposed **action** on the **environment**. The population and growth **impacts** of an  
5 **action** shall be estimated if expected to be significant, and an evaluation **shall be**<sup>465</sup>  
6 made of the **effects** of any possible change in population patterns or growth upon the  
7 resource base, including but not limited to land use, water, and public services, of the  
8 area in question. Also, if the proposed **action** constitutes a direct or indirect source of  
9 pollution as determined by any governmental **agency**, necessary data **regarding these**  
10 **impacts**<sup>466</sup> shall be incorporated into the **EIS**. The significance of the **impacts** shall be  
11 discussed in terms of **subsections** [(j), (k), (l), and (m)] **(m), (n), (o), and (p)**<sup>467</sup>.

12  
13 (m) The draft **EIS** shall include in a separate and distinct section a description of **the**  
14 relationship between local short-term uses of humanity's **environment** and the  
15 maintenance and enhancement of long-term productivity. The extent to which the  
16 proposed **action** involves trade-offs among short-term and long-term gains and losses  
17 shall be discussed. The discussion shall include the extent to which the proposed **action**  
18 forecloses future options, narrows the range of beneficial uses of the **environment**, or  
19 poses long-term risks to health or safety. In this context, short-term and long-term do not  
20 necessarily refer to any fixed time periods, but shall be viewed in terms of the  
21 environmentally significant consequences of the proposed **action**.

22  
23 (n) The draft **EIS** shall include in a separate and distinct section a description of all  
24 irreversible and irretrievable commitments of resources that would be involved in the  
25 proposed **action** should it be implemented. Identification of unavoidable **impacts** and the  
26 extent to which the **action** makes use of non-renewable resources during the phases of  
27 the **action**, or irreversibly curtails the range of potential uses of the **environment** shall  
28 also be included. The possibility of environmental accidents resulting from any phase of  
29 the **action** shall also be considered. [~~Agencies shall avoid construing the term~~  
30 ~~"resources" to mean only the labor and materials devoted to an action. "Resources" also~~  
31 ~~means the natural and cultural resources committed to loss or destruction by the action.~~]

32  
33 (o) The draft **EIS** shall address all probable adverse environmental **effects** [~~which~~] **that**  
34 cannot be avoided. Any adverse **effects** such as water or air pollution, urban congestion,  
35 threats to public health, or other consequences adverse to environmental goals and  
36 guidelines established by environmental response laws, coastal zone management laws,  
37 pollution control and abatement laws, and environmental policy [~~such as that~~] **including**  
38 **those**<sup>468</sup> found in chapters 128D **(Environmental Response Law)**, 205A **(Coastal Zone**

<sup>465</sup> Housekeeping.

<sup>466</sup> Clarifies what the data should be about.

<sup>467</sup> Housekeeping to update paragraph references.

<sup>468</sup> Housekeeping.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water  
2 Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise  
3 Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling),  
4 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L  
5 (Underground Storage Tanks), [ 342N,]<sup>469</sup> 342P (Asbestos and Lead), and 344 (State  
6 Environmental Policy)<sup>470</sup>, HRS, [~~shall be included, including~~] and<sup>471</sup> those **effects**  
7 discussed in other [~~actions~~] subsections of this [~~paragraph~~] section<sup>472</sup> [~~which~~] that are  
8 adverse and unavoidable under the proposed **action** must be addressed in the draft  
9 **EIS**<sup>473</sup>. Also, the rationale for proceeding with a proposed **action**, notwithstanding  
10 unavoidable **effects**, shall be clearly set forth in this section. The draft **EIS** shall indicate  
11 what other interests and considerations of governmental policies are thought to offset the  
12 adverse environmental **effects** of the proposed **action**. The draft<sup>474</sup> [~~statement~~] **EIS** shall  
13 also indicate the extent to which these stated countervailing benefits could be realized by  
14 following reasonable alternatives to the proposed **action** that would avoid some or all of  
15 the adverse environmental **effects**.

16  
17 (p) The draft **EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or  
18 reduce [~~impact~~] impacts<sup>475</sup>, including provision for compensation for losses of cultural,  
19 community, historical, archaeological, fish and wildlife resources, including the acquisition  
20 of land, waters, and interests therein. Description of any mitigation measures included in  
21 the **action** plan to reduce significant, unavoidable, adverse **impacts** to insignificant  
22 levels, and the basis for considering these levels acceptable shall be included. Where a  
23 particular mitigation measure has been chosen from among several alternatives, the  
24 measures shall be discussed and reasons given for the choice made. [~~Included~~] The draft  
25 **EIS shall include**, where possible [~~and appropriate~~]<sup>476</sup>, [~~should be~~]<sup>477</sup> specific reference to  
26 the timing of each step proposed to be taken in [~~the~~] any<sup>478</sup> mitigation process, what  
27 performance bonds, if any, may be posted, and what other provisions are proposed to  
28 assure that the mitigation measures will in fact be taken.

29  
30 (q) The draft **EIS** shall include a separate and distinct section that summarizes unresolved  
31 issues and contains either a discussion of how such issues will be resolved prior to

---

<sup>469</sup> Repealed.

<sup>470</sup> Provides titles of each chapter referenced.

<sup>471</sup> Housekeeping.

<sup>472</sup> Clarifies that all probable adverse and unavoidable effects of the proposed action within this section, among others, must be included.

<sup>473</sup> Housekeeping. Replaces "shall be included" deleted above.

<sup>474</sup> Clarifies that this is the draft EIS.

<sup>475</sup> Housekeeping.

<sup>476</sup> Removes redundant language.

<sup>477</sup> Housekeeping.

<sup>478</sup> Changes reference to "any" mitigation measure process that may result from the analysis.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 commencement of the **action**, or what overriding reasons there are for proceeding  
2 without resolving the [~~problems~~] **issues**<sup>479</sup>.  
3
- 4 (r) The draft **EIS** shall include a separate and distinct section that contains a list identifying  
5 all governmental agencies, other organizations and private individuals consulted in  
6 preparing the **statement**, and **shall disclose**<sup>480</sup> the identity of the **persons**, firms, or  
7 **agency** preparing the **statement**, by contract or other authorization[~~, shall be disclosed~~].  
8
- 9 (s) The draft **EIS** shall include a separate and distinct section that contains:  
10 (1) [~~reproductions~~] Reproductions of all [~~substantive~~] **written** comments [~~and~~  
11 [~~responses made~~] **submitted**<sup>481</sup> during the [~~consultation process~~] **thirty-day**  
12 **consultation period required in section 11-200-23A. If a number of comments are**  
13 **identical or very similar, one representative copy may be included with a list of the**  
14 **names of each commenter, when known, that submitted the identical comments**  
15 **rather than reproducing each identical comment**<sup>482</sup>;  
16 (2) **Responses to all substantive written comments made during the thirty-day**  
17 **consultation period required in section 11-200A-23A. Responses shall be made**  
18 **within the draft EIS.**<sup>483</sup> **If a number of comments are identical or very similar, the**  
19 **proposing agency or applicant may group the comments and prepare a single**  
20 **response for each grouping.**<sup>484</sup> **The name of each commenter, when known, shall**  
21 **be included with the grouped response.**<sup>485</sup>  
22 (4) **A summary of any EIS public scoping meetings, including a general summary**  
23 **of the oral comments**<sup>486</sup> **made, and a representative sample of any handout**  
24 **related to the action provided at EIS public scoping meetings**<sup>487</sup>;

<sup>479</sup> Aligns language throughout sentence to reference “issues” rather than “issues” and “problems”.

<sup>480</sup> Stylistic change to increase readability.

<sup>481</sup> Emphasizes that the comments are written comments that are submitted during the consultation period.

<sup>482</sup> Aligns language with section 11-200A-26A that reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

<sup>483</sup> Clarifies that responses shall be made and included within the draft EIS itself. Responses do not need to separately be sent to each commenter.

<sup>484</sup> Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

<sup>485</sup> Requires including the names of commenters who provided the comments that have been grouped so that those commenters may determine whether their comment was responded to and what the response is.

<sup>486</sup> The general summary of oral comments does not need to be an exhaustive or verbatim transcript of the comments made at the public scoping meeting. Rather, it is intended to capture generally the comments made at the scoping meeting. Oral comments are not required to be responded to directly in the EIS, but must be taken into consideration in identifying likely effects. A court report or transcriber is not required.

<sup>487</sup> Requires that a representative sample of the handouts prepared for and distributed at any public scoping meeting are included in the draft EIS, including the agenda. Clarifies that any handouts not related

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

- 1 (5) A list of those **persons** or **agencies** who were consulted and had no comment  
2 ~~[shall be included in the draft EIS]~~ **in a manner indicating that no comment was**  
3 **provided;**<sup>488</sup> **and**  
4 (6) **A representative sample of the agency consultation request letter.**<sup>489</sup>  
5  
6 (t) An **addendum document**<sup>490</sup> to a draft environmental impact statement **EIS** shall  
7 reference the original draft environmental impact statement **EIS to which**<sup>491</sup> it attaches  
8 ~~to~~<sup>492</sup> and comply with all applicable filing, public review, and comment requirements set  
9 forth in subchapter [Z] **10A.**<sup>493</sup>

10  
11 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-5, 343-6)  
12

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to the action need not be included. For example, general promotional materials for the applicant need not be included, but a factsheet outlining the proposed action should be included.

<sup>488</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual. Also includes situations where a letter requesting comments from an agency or other individual or entity is sent and the response received provides that the agency, other entity, or individual has “no comment”.

<sup>489</sup> Makes explicit that only one representative copy of the agency consultation letter is required, similar to requiring only one reproduction of identical comments, such as form letters.

<sup>490</sup> Removes the word document as it is unnecessary.

<sup>491</sup> Housekeeping.

<sup>492</sup> Housekeeping.

<sup>493</sup> Formerly § 11-200-22(d).

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-25A Public Review Requirements for Draft  
2 Environmental Impact Statements and Addenda<sup>494</sup>

3 (a) Public review shall not substitute for early and open discussion with interested **persons**  
4 and **agencies**~~[,]~~<sup>495</sup> concerning the environmental **impacts** of a proposed **action**. Review  
5 of the **draft**<sup>496</sup> **EIS**, shall serve to provide the public and other agencies an opportunity to  
6 discover the extent to which a **proposing agency** or **applicant** has examined  
7 environmental concerns and available alternatives.

8  
9 (b) The period for public review and for submitting written comments shall commence [~~as of~~]  
10 **from** the date **that**<sup>497</sup> notice of availability of the draft **EIS** is initially issued in the **periodic**  
11 **bulletin** and shall continue for a period of forty-five days, **unless mandated otherwise by**  
12 **statute**<sup>498</sup>. Written comments to the [~~approving agency or~~] **accepting authority**~~[,~~  
13 ~~whichever is applicable,~~]<sup>499</sup> with a copy of the comments to the [~~applicant or~~] **proposing**  
14 **agency or applicant**<sup>500</sup>, shall be received or postmarked to the **approving agency** or  
15 **accepting authority**, within [~~said~~] **the**<sup>501</sup> forty-five-day **comment**<sup>502</sup> period. Any comments  
16 outside of the forty-five day comment period need not be [~~considered or~~] responded to  
17 **nor considered**<sup>503</sup>.

18  
19 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)  
20

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<sup>494</sup> Formerly § 11-200-22, HAR (1996). Section 11-200-22, HAR, (1996) has been divided into two sections; this one and § 11-200A-26A. This section addresses the public review requirements, including the period for public review. Section 11-200A-26A addresses response requirements for written comments received during the public review period.

<sup>495</sup> Housekeeping.

<sup>496</sup> Clarifies that the document is a draft EIS.

<sup>497</sup> Housekeeping.

<sup>498</sup> Acknowledges that the public review period may be altered for certain actions by statute. For example, the development or expansion of forensic facilities of the department of health or in-state correctional facilities have 60-day comment periods for draft EISs (and EAs), per sections 334-2.7 and 353-16.35, HRS, respectively.

<sup>499</sup> For an applicant EIS, the approving authority and accepting agency are the same.

<sup>500</sup> Place “proposing agency” before “applicant”.

<sup>501</sup> Housekeeping.

<sup>502</sup> Clarifies that the forty-five days is for the comment period.

<sup>503</sup> Stylistic change to increase readability.

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Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-26A Comment Response Requirements for Draft  
2 Environmental Impact Statements<sup>504</sup>

3 (a) All written comments shall be reproduced in the final EIS, provided that if a number of  
4 written comments are identical or very similar, the proposing agency or applicant may  
5 include a single representative sample of those written comments with a list of the names  
6 of commenters, when known, that submitted the identical comments rather than  
7 reproducing each individual comment.<sup>505</sup>

8  
9 (b) In accordance with the content requirements of section 11-200A-27A, [The] the  
10 proposing agency or applicant shall respond [in writing]<sup>506</sup> within the final EIS<sup>507</sup> to the  
11 substantive written comments received or postmarked during the forty-five-day review  
12 period. ~~[and incorporate the comments and responses in the final EIS]. [The response to~~  
13 ~~comments shall include:]<sup>508</sup> In deciding whether a written comment is substantive, the  
14 proposing agency or applicant shall give careful consideration to the validity,  
15 significance, and relevance of the comment to the scope, analysis, or process of the EIS,  
16 bearing in mind the purpose of this chapter and chapter 343, HRS.<sup>509</sup> Written comments  
17 deemed by the proposing agency or applicant as non-substantive and to which no  
18 response was provided shall be clearly indicated.~~

19  
20 (c) In responding to substantive written comments, proposing agencies and applicants  
21 [Responses] shall endeavor to resolve conflicts, inconsistencies, or concerns identified  
22 and to provide a response that is commensurate with the content of those comments.<sup>510</sup>

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<sup>504</sup> Formerly § 11-200-22, HAR (1996). Section 11-200-22, HAR, (1996) has been divided into two sections including this and § 11-200A-25A. This section addresses response requirements for written comments received during the public review period as amended from section 11-200-22, HAR (1996).

<sup>505</sup> Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

<sup>506</sup> Removes phrase because the response must be in the final EIS, which is written.

<sup>507</sup> Clarifies that responses shall be made and included within the draft EIS itself. Responses do not need to separately be sent to each commenter.

<sup>508</sup> Source: § 11-200-22(c), HAR (1996).

<sup>509</sup> Source: § 11-200-22(c), HAR (1996) required proposing agencies and applicants to include a “point-by-point discussion of the validity, significance, and relevance of comments”. The proposed language uses the criteria to guide proposing agencies and applicants in determining whether a comment is substantial and therefore requires a response within the final EIS. The remaining provisions of this section focus the response to substantive comments on addressing the issues raised by comments in a manner commensurate with the content of the comment, to resolve conflicts, and address inconsistencies and concerns raised by the comment.

<sup>510</sup> Provides that responses to comments shall, at a minimum, endeavor to be commensurate with the content of the comment received. For example, a brief response to a brief, focused comment is warranted, whereas a longer, detailed comment should receive a longer, more detailed response. The length of response is not the only measure of commensurability. A brief comment may raise a significant environmental concern requiring detailed discussion and analysis within the body of the EIS, and the

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Environmental Council

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This reorganization is referred to as HAR Chapter 11-200A

1 ~~[Response letters reproduced in the text of the final EIS]~~<sup>511</sup> **The response** shall indicate  
2 ~~[verbatim]~~<sup>512</sup> changes that have been made to the text of the draft **EIS**. The response  
3 shall describe the disposition of significant environmental issues raised [(e.g., **For**  
4 **example, the response may point to** revisions to the proposed [project] **action**<sup>513</sup> to  
5 mitigate anticipated **impacts** or objections **raised in the comment**[, etc.]). In particular,  
6 the issues raised when the [applicant's or] **proposing agency's or applicant's**<sup>514</sup>  
7 position is at variance with recommendations and objections raised in the comments shall  
8 be addressed in detail, giving reasons why specific comments and suggestions were not  
9 accepted, and factors of overriding importance warranting an override of the  
10 suggestions.<sup>515</sup>

- 11  
12 (d) **If a number of substantive comments are identical or very similar, the proposing agency**  
13 **or applicant may group those comments and prepare a single response for each**  
14 **grouping.**<sup>516</sup> **The name of each commenter, when known, shall be included with the**  
15 **grouped response.**<sup>517</sup>

16  
17 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)  
18

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response to the comment could include a discussion of how that comment was considered, and where the analysis that it necessitated is included within the body of the EIS. An acknowledgement of comments that provide less substantive content, but that are relevant to the scope, analysis or process of the EIS, may be a sufficient and a detailed discussion would not be required.

<sup>511</sup> Removes language because individual response letters are no longer required to be sent to individual commenters, and comments may be grouped with a single response, so long as the agencies or persons who provided the comments are indicated.

<sup>512</sup> The response does not need to reproduce the changes verbatim but instead, may reference the specific sections within the final EIS that were modified due to the comment.

<sup>513</sup> Provides clarity that revisions may be made to a project or a program.

<sup>514</sup> Place "proposing agency's" before "applicant's".

<sup>515</sup> Source: § 11-200-22(c), HAR (1996).

<sup>516</sup> Reduces the requirement in responding to voluminous and nearly identical comments individually. It also focuses attention on the content of the comments and the issues raised, rather than on responding to each individual commenter separately.

<sup>517</sup> Requires including the names of commenters who provided the comments that have been grouped so that those commenters may determine whether their comment was responded to and what the response is.

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This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-27A Content Requirements; Final Environmental  
2 Impact Statement<sup>518</sup>

3 (a) The final EIS, at a minimum, shall contain the information required in this section.<sup>519</sup> The  
4 contents shall fully declare the environmental implications of the proposed action and  
5 shall discuss all ~~[relevant and feasible]~~ reasonably foreseeable<sup>520</sup> consequences of the  
6 action. In order that the public can be fully informed and that the agency can make a  
7 sound decision based upon the full range of responsible opinion on environmental  
8 effects, ~~[a statement]~~ an EIS shall include responsible opposing views, if any, on  
9 significant environmental issues raised by the proposal.<sup>521</sup>

10

11 (b) The final EIS shall consist of:

12 (1) The draft EIS prepared in compliance with this subchapter, as<sup>522</sup> revised to  
13 incorporate substantive comments received during the ~~[consultation and]~~<sup>523</sup> review  
14 processes in conformity with section 11-200A-26A, including reproduction of all  
15 comments and responses to substantive written comments<sup>524</sup>;

16 ~~[(2)] [Reproductions of all letters received containing substantive questions, comments,~~  
17 ~~or recommendations and, as applicable, summaries of any scoping meetings~~  
18 ~~held;]~~<sup>525</sup>

19 ~~[(3)]~~ (2) A list of **persons**, organizations, and public **agencies** commenting on the draft  
20 **EIS**;

21 (3) A list of those persons or agencies who were consulted with in preparing the final  
22 EIS and had no comment shall be included in a manner indicating that no  
23 comment was provided<sup>526</sup>.

<sup>518</sup> Formerly § 11-200-18, HAR (1996). All language in this section comes from section 11-200-18, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>519</sup> Mirrors introductory language for contents of a draft EIS in section 11-200A-23A, from section 11-200-17(a), HAR (1996).

<sup>520</sup> Replaces “relevant and feasible” with “reasonably foreseeable,” a phrase in line with NEPA, with more case history, and federal guidance to provide clarity on the desired standard.

<sup>521</sup> Source: § 11-200-16, HAR (1996).

<sup>522</sup> Connects this section with the content requirements of this subchapter.

<sup>523</sup> Removes redundant language about consultation because comments received during the consultation process (i.e., following publication of the EISPN) are incorporated into the draft EIS under section 11-200-24A.

<sup>524</sup> Indicates that section 11-200A-26A includes reproduction and response requirements to written comments on the draft EIS.

<sup>525</sup> The reproduction and response requirements to written comments on the draft EIS within the final EIS are set forth in section 11-200A-26A, which is incorporated by reference in (b)(1).

<sup>526</sup> Distinguishes between a consultation in which an agency, citizen group, or individual provides comments to the proposing agency or applicant regarding the action and a consultation in which the proposing agency or applicant only provides information about the action to the agency, citizen group, or individual. Includes when an agency responds to a request for comments that it has “no comment”.

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- 1 (4) [~~The responses of the applicant or **proposing agency** to each substantive~~  
2 ~~question, comment, or recommendation received in the review and consultation~~  
3 ~~processes,]~~<sup>527</sup> A written general summary of oral comments made at any public  
4 hearings;<sup>528</sup> and  
5 (5) The text of the final **EIS** [~~which shall be~~]<sup>529</sup> written in a format [~~which~~] that allows  
6 the reader to easily distinguish changes made to the text of the draft **EIS**.  
7  
8 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-2, 343-5, 343-6)  
9

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<sup>527</sup> The reproduction and response requirements to written comments on the draft EIS within the final EIS are set forth in section 11-200A-26A, which is incorporated by reference in (b)(1).

<sup>528</sup> Specifies that a summary of the oral comments made at any EIS public scoping meeting or public hearing must be provided in the final EIS.

<sup>529</sup> Housekeeping.

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

This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-28A Acceptability<sup>530</sup>

- 2 (a) Acceptability of ~~[a statement]~~ a final EIS<sup>531</sup> shall be evaluated on the basis of whether the  
3 ~~[statement]~~ final EIS<sup>532</sup>, in its completed form, represents an informational instrument  
4 ~~[which]~~ that fulfills the ~~[definition of an EIS]~~ intent and provisions of chapter 343, HRS,<sup>533</sup>  
5 and adequately discloses and describes all identifiable environmental **impacts** and  
6 satisfactorily responds to review comments.  
7
- 8 (b) A ~~[statement]~~ final EIS<sup>534</sup> shall be deemed to be an acceptable document by the  
9 **accepting authority or approving agency** only if all of the following criteria are satisfied:  
10 (1) The procedures for assessment, consultation process, review, and the preparation  
11 and submission of the ~~[statement]~~ EIS, from proposal of the action to publication  
12 of the final EIS,<sup>535</sup> have all been completed satisfactorily as specified in this  
13 chapter;  
14 (2) The content requirements described in this chapter have been satisfied<sup>536</sup>; and  
15 (3) Comments submitted during the review process have received responses  
16 satisfactory to the **accepting authority, or approving agency,** including properly  
17 identifying comments as substantive and responding in a way commensurate to  
18 the comment,<sup>537</sup> and have been appropriately<sup>538</sup> incorporated ~~[in]~~ into the  
19 ~~[statement]~~ final EIS<sup>539</sup>.  
20
- 21 (c) For **actions** proposed by **agencies**, the **proposing agency** may request the **office** to  
22 make a recommendation regarding the acceptability or non-acceptability of the **EIS.** If the  
23 office decides to make a recommendation, it shall submit the recommendation to the  
24 accepting authority and proposing agency.<sup>540</sup> In all cases involving state funds or

<sup>530</sup> Formerly § 11-200-23, HAR (1996). All language in this section comes from section 11-200-23, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>531</sup> Clarifies that the document is a final EIS.

<sup>532</sup> Clarifies that the document is a final EIS.

<sup>533</sup> Clarifies that the EIS must meet all applicable elements of environmental review.

<sup>534</sup> Clarifies that the document is a final EIS.

<sup>535</sup> Clarifies that the criterion applies to the process from when a proposing agency or applicant initiates environmental review. This captures the direct-to-EIS and the EA-to-EIS pathways.

<sup>536</sup> Comments received and their responses being reproduced in the final EIS are part of the content requirement as described in proposed section 11-200A-26A.

<sup>537</sup> Clarifies that the accepting authority must be satisfied that the proposing agency or applicant properly characterized comments as substantive or not and gave a commensurate response to substantive comments. Finding that substantive comments have been improperly categorized as non-substantive and therefore not receiving a response commensurate to the substantive nature of the comment could be reason to issue a nonacceptance.

<sup>538</sup> Recognizes that not all comments are incorporated into the language of a final EIS.

<sup>539</sup> Clarifies that the document is a final EIS.

<sup>540</sup> Mirrors language in paragraph (e) and clarifies that the office can choose to make a recommendation. Unlike for applicants, chapter 343, HRS, imposes no deadline for making acceptance or nonacceptance

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This reorganization is referred to as HAR Chapter 11-200A

1 lands, the governor or ~~[an]~~ the governor's<sup>541</sup> authorized representative shall have final  
2 authority to accept the **EIS**. In cases involving only county funds or lands, the mayor of  
3 the respective county or ~~[an]~~ the mayor's<sup>542</sup> authorized representative shall have final  
4 authority to accept the **EIS**. The **accepting authority** shall take prompt measures to  
5 determine the acceptability or non-acceptability<sup>543</sup> of the **proposing agency's** ~~[statement]~~  
6 **EIS**. In the event that the **action** involves ~~[both]~~ state and county lands ~~[or]~~, state or  
7 county funds, or both state and county lands and state and county<sup>544</sup> funds,<sup>545</sup> the  
8 governor or ~~[an]~~ the governor's<sup>546</sup> authorized representative shall have final authority to  
9 accept the **EIS**.

10  
11 (d) Upon **acceptance** or non-acceptance of the **EIS**, a notice shall be filed by the appropriate  
12 **accepting authority** with both the **proposing agency** and the **office**. For any non-  
13 accepted **EIS**, the notice shall contain specific findings and reasons for non-acceptance.  
14 The **office** shall publish notice of the determination of **acceptance** or non-acceptance in  
15 the **periodic bulletin** in accordance with section ~~[11-200-3]~~ 11-200A-5A.<sup>547</sup> **Acceptance**  
16 of a required **statement** shall be a condition precedent to the use of state or county lands  
17 or funds in implementing the proposed **action**.

18  
19 (e) For **actions** proposed by **applicants** requiring **approval** from an **agency**, the **applicant**  
20 or **accepting authority**, which is the approving agency,<sup>548</sup> may request the **office** to  
21 make a recommendation regarding the acceptability or non-acceptability of the  
22 ~~[statement]~~ **EIS**. If the **office** decides to make a recommendation, it shall submit the  
23 recommendation to the **applicant** and the **approving agency** within the ~~[thirty-day]~~<sup>549</sup>  
24 period requiring an **approving agency** to determine the acceptability of the final **EIS** ~~[and~~  
25 ~~described in section 343-5(c), HRS]~~<sup>550</sup>. Upon **acceptance** or non-acceptance by the  
26 **approving agency**, the **agency** shall notify the **applicant** of its determination, and  
27 provide specific findings and reasons. The **agency** shall also provide a copy of this  
28 determination to the **office** for publication ~~[of a notice]~~<sup>551</sup> in the **periodic bulletin**.

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determinations. The office should make its recommendation as quickly as possible and ideally within the same thirty-day period that chapter 343, HRS, prescribes for applicant actions so that agency actions are not unduly delayed.

<sup>541</sup> Housekeeping.

<sup>542</sup> Housekeeping.

<sup>543</sup> Housekeeping.

<sup>544</sup> Provides clarity that "state and county" applies to both funds and lands.

<sup>545</sup> Clarifies situations where a proposed action has mixed state and county lands or funds or both lands and funds.

<sup>546</sup> Housekeeping.

<sup>547</sup> Updates section reference.

<sup>548</sup> Clarifies that in the case of applicant EISs, the approving agency is the accepting authority.

<sup>549</sup> Removes the "thirty-day" so that the office may also submit its recommendation during an extended acceptance period should the applicant and accepting authority agree to extend the acceptance period.

<sup>550</sup> Unnecessary language.

<sup>551</sup> Housekeeping.

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This reorganization is referred to as HAR Chapter 11-200A

1 **Acceptance** of the required **EIS** shall be a condition precedent to **approval** of the  
2 request and commencement of the proposed **action**. ~~[An approving agency shall take~~  
3 ~~prompt measures to determine the acceptability or non-acceptability of the applicant's~~  
4 ~~statement.]~~<sup>552</sup> The **agency** shall notify the **applicant** and the **office** of the **acceptance** or  
5 non-acceptance of the final **EIS** within thirty days of the final **EIS** **submission to the**  
6 **agency**<sup>553</sup> ~~[,]~~<sup>554</sup> provided that the thirty-day period may, **at the request of the applicant,**  
7 be extended ~~[at the request of the applicant]~~<sup>555</sup> for a period not to exceed fifteen days.  
8 The request shall be made to the **accepting authority** in writing. Upon receipt of an  
9 **applicant's** **written**<sup>556</sup> request for an extension of the thirty-day **acceptance** period, the  
10 **accepting authority** shall notify the **office** and **applicant** in writing of its decision to grant  
11 or deny the request. The notice shall be accompanied by a copy of the **applicant's**  
12 request. An extension of the thirty-day **acceptance** period shall not be ~~[allowed]~~  
13 **granted**<sup>557</sup> merely for the convenience of the **accepting authority**. In the event that the  
14 **agency** fails to make a determination of **acceptance** or non-acceptance ~~[for]~~ **of**<sup>558</sup> the  
15 ~~[statement]~~ **EIS**<sup>559</sup> within thirty days of the receipt of the final **EIS**, then the **statement**  
16 shall be deemed accepted.

- 17  
18 (f) A non-accepted **EIS** may be revised by a **proposing agency** or **applicant**. The revision  
19 shall take the form of a revised draft **EIS** ~~[document]~~<sup>560</sup> which shall fully address the  
20 inadequacies of the non-accepted **EIS** and shall completely and thoroughly discuss the  
21 changes made. The requirements for filing, distribution, publication of availability for  
22 review, **acceptance** or non-acceptance, and notification and publication of acceptability  
23 shall be the same as the requirements prescribed by ~~[sections 11-200-20, 11-200-21, 11-~~  
24 ~~200-22, and 11-200-23]~~ **subchapters 4A and 10A**<sup>561</sup> for an **EIS** submitted for **acceptance**.  
25 In addition, the ~~[revised draft EIS]~~ **subsequent revised final EIS**<sup>562</sup> shall be evaluated for  
26 acceptability on the basis of whether it satisfactorily addresses the findings and reasons  
27 for non-acceptance.  
28  
29

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<sup>552</sup> Redundant when read with the following sentence that sets forth a timeline.

<sup>553</sup> Clarifies that the thirty days counts from the date the agency receives the final EIS from the applicant; not when the office publishes the final EIS in the periodic bulletin.

<sup>554</sup> Housekeeping.

<sup>555</sup> Housekeeping.

<sup>556</sup> Connects to the previous sentence, clarifying that the request shall be made in writing.

<sup>557</sup> Mirrors language within the provision.

<sup>558</sup> Housekeeping.

<sup>559</sup> Housekeeping.

<sup>560</sup> Housekeeping.

<sup>561</sup> These subsections refer to filing and preparation of Draft and Final Environmental Impact Statements.

<sup>562</sup> Adds revised final EIS and deletes draft EISs because draft EISs are not reviewed for acceptability.

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This reorganization is referred to as HAR Chapter 11-200A

- 1 (g) A **proposing agency** or **applicant** may withdraw an **EIS** by **simultaneously**<sup>563</sup> sending a  
2 [~~letter~~] written **notification**<sup>564</sup> to the **office** **and to the accepting authority**<sup>565</sup> informing the  
3 **office** of the **proposing**<sup>566</sup> **agency's** or **applicant's** withdrawal. Subsequent resubmittal  
4 of the **EIS** shall meet all requirements for filing, distribution, publication, review,  
5 **acceptance**, and notification as a [~~new~~] **draft**<sup>567</sup> **EIS**.  
6  
7 [Eff and comp \_\_\_\_\_] (Auth: HRS § 343-5, 343-6) (Imp: HRS § 343-5, 343-6)  
8

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<sup>563</sup> Requires the office and accepting authority to be notified of the withdrawal at the same time.

<sup>564</sup> Removes the requirement for a letter and simply requires written notification, such as by email.

<sup>565</sup> Includes the accepting authority (i.e., approving agency, governor, or mayor, or delegated authority).

<sup>566</sup> Clarifies that the agency withdrawing the proposal is the proposing agency.

<sup>567</sup> Replaces “new” with “draft” to clarify at which stage the withdrawn EIS resumes.

## 1 Subchapter 11A Appeals

- 2 • Describes how an applicant may appeal an agency determination of nonacceptance to  
3 the council.

### 4 § 11-200A-29A Appeals to the Council<sup>568</sup>

5 An **applicant**, within sixty days after a<sup>569</sup> non-acceptance determination by the approving  
6 agency under section 11-200A-28A<sup>570</sup> of [a statement] a final EIS<sup>571</sup> [by an agency]<sup>572</sup>, may  
7 appeal<sup>573</sup> the non-acceptance to the **council**, which within thirty days<sup>574</sup> of receipt of the appeal,  
8 shall notify the **applicant** appealing of its determination to affirm the approving agency's non-  
9 acceptance or to reverse it<sup>575</sup>. The council chairperson shall include the appeal on the agenda  
10 of the next council meeting following receipt of the appeal.<sup>576</sup> In any affirmation or reversal of an  
11 appealed non-acceptance, the **council** shall provide the **applicant** and the **agency** with specific  
12 findings and reasons for its determination. The **agency** shall abide by the **council's** decision.

13  
14 [Eff and comp \_\_\_\_\_] (Auth: HRS § 343-5, 343-6) (Imp: HRS § 343-5, 343-6)

15

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<sup>568</sup> Formerly § 11-200-24, HAR (1996). All language in this section comes from section 11-200-24, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>569</sup> Housekeeping.

<sup>570</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 28A.

<sup>571</sup> Clarifies that the document is a final EIS.

<sup>572</sup> Clarifies the agency issuing the non-acceptance and ties it to the acceptability criteria in section 28A.

<sup>573</sup> Note that since 1996, while appeal to the council has been contemplated by applicants, no applicant has appealed a nonacceptance to the council.

<sup>574</sup> Subsection 343-5(e) requires the council to notify the applicant of the council's determination within thirty days of receipt of the appeal.

<sup>575</sup> Clarifies the Council's determination.

<sup>576</sup> Connects receipt of the notice to appeal under chapter 343-5(e), HRS, with the timing of the next Environmental Council meeting.

## 1 Subchapter 12A National Environmental Policy Act

- 2 • Describes how to conduct environmental review for chapter 343, HRS, when the federal  
3 National Environmental Policy Act (NEPA) environmental review is also applicable.

### 4 § 11-200A-30A National Environmental Policy Act Actions: 5 Applicability to Chapter 343, HRS<sup>577</sup>

6 When ~~[the situation occurs where]~~<sup>578</sup> a certain **action** will be subject both to the **National**  
7 **Environmental Policy Act** of 1969 (Public Law 91-190, as amended by Public Law 94-52 and  
8 Public Law 94-83; 42 U.S.C. [~~§~~] **sections**<sup>579</sup> 4321-4347) and chapter 343, HRS, the following  
9 shall occur:

10 (1) The **applicant** or **agency**, upon discovery of its proposed **action** being subject to  
11 both chapter 343, HRS, and the ~~[National Environmental Policy Act]~~ **NEPA**<sup>580</sup>,  
12 shall notify the responsible federal ~~[agency]~~ **entity**<sup>581</sup>, the **office**, and any **agency**  
13 with a definite interest in the **action** (as prescribed by chapter 343, HRS) ~~[of the~~  
14 ~~situation]~~.<sup>582</sup>

15  
16 (2) When a federal entity determines that the proposed **action** is exempt<sup>583</sup> from  
17 review under the **NEPA**, this determination does not automatically constitute an  
18 exemption for the purposes of this chapter. In such cases, state and county  
19 agencies remain responsible for compliance with this chapter. However, the  
20 federal exemption may be considered in the state or county **agency**  
21 determination.<sup>584</sup>

22  
23 (3) When a federal entity issues a **FONSI** and concludes that an **EIS** is not required  
24 under the **NEPA**, this determination does not automatically constitute compliance

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<sup>577</sup> Formerly § 11-200-25, HAR (1996). All language in this section comes from section 11-200-25, HAR (1996) or is in addition to it. Language that has been added is highlighted and language that has been moved from another section of HAR chapter 11-200 (1996) is underlined but not highlighted.

<sup>578</sup> Housekeeping.

<sup>579</sup> Housekeeping.

<sup>580</sup> Housekeeping.

<sup>581</sup> Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by statute to not include the federal government.

<sup>582</sup> Housekeeping.

<sup>583</sup> The NEPA uses “exemption” and “exclusion” (along with “categorical”) interchangeably and in specific ways, depending on the federal agency. The use of “exempt” here is meant to capture “exemption” and “exclusion” under NEPA where NEPA is found to apply but an EA or EIS is not required. Where NEPA does not apply by federal statute is not relevant to chapter 343, HRS.

<sup>584</sup> States that federal categorical exemptions do not automatically result in exemptions under chapter 343, HRS. State and county agencies must still make a determination that the action is exempt, requires an EA, or may proceed directly to preparing an EIS.

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1 with this chapter. In such cases, state and county agencies remain responsible for  
2 compliance with this chapter. However, the federal FONSI may be considered in  
3 the state or county agency determination.<sup>585</sup>  
4

5 (4) The [National Environmental Policy Act] **NEPA**<sup>586</sup> requires that [draft  
6 statements]<sup>587</sup> **EISs**<sup>588</sup> be prepared by the responsible federal [agency] **entity**<sup>589</sup>.  
7 In the case of actions for which an EIS pursuant to the NEPA has been prepared  
8 by the responsible federal entity<sup>590</sup>, the draft and final federal EIS may be  
9 submitted to comply with this chapter,<sup>591</sup> so long as the federal EIS satisfies the  
10 EIS content requirements of this chapter and is not found to be inadequate under  
11 the NEPA: by a court; by the Council on Environmental Quality (or is at issue in  
12 pre-decision referral to Council on Environmental Quality) under the NEPA  
13 regulations; or by the administrator of the United States Environmental Protection  
14 Agency under section 309 of the Clean Air Act, 41 U.S.C. 1857.<sup>592</sup>  
15

16 (5)<sup>593</sup> When the responsibility of preparing an **EIS** is delegated to a state or county  
17 **agency**, this chapter shall apply in addition to federal requirements under the  
18 [National Environmental Policy Act] **NEPA**<sup>594</sup>. The **office** and **state or**  
19 **county**<sup>595</sup> **agencies** shall cooperate with federal [agencies] **entities**<sup>596</sup> to the fullest

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<sup>585</sup> Clarifies that a federal entity may issue a FONSI for its purposes, but a state or county agency may still require an EA or EIS for its purposes, or issue an exemption based on the federal FONSI so long as the state or county agency has considered HEPA-specific content requirements, either through the federal FONSI or through its own judgment and experience.

<sup>586</sup> Housekeeping.

<sup>587</sup> Language is applicable to draft and final.

<sup>588</sup> Housekeeping.

<sup>589</sup> Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by chapter 343, HRS to not include the federal government.

<sup>590</sup> Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by chapter 343, HRS to not include the federal government.

<sup>591</sup> Based on Massachusetts’ statutory language that federally-prepared EISs are sufficient for the purposes of Chapter 343. The goal is to allow a federal EIS to meet this chapter’s requirements provided it addresses this chapter’s content requirements. In this case, state and county agencies can provide the information to the federal preparer for inclusion in its document rather than the state or county agency preparing a second document.

<sup>592</sup> Adds language based on State of Washington Administrative Code to ensure that the federally-prepared statement meets federal standards for quality. The reference to the Clean Air Act is because that act authorizes the US Environmental Protection Agency (EPA) to review certain federal actions. If the EPA is not satisfied with the EIS, then it can refer it to the federal Council on Environmental Quality for mediation.

<sup>593</sup> Separated the existing language into two paragraphs; one about when a federal agency prepares the EIS and one about when a federal agency delegates the responsibility to a state or county agency.

<sup>594</sup> Housekeeping.

<sup>595</sup> Provides clarity that state or county agencies are referred to here, as opposed to federal agencies also discussed in this section.

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This reorganization is referred to as HAR Chapter 11-200A

1 extent possible to reduce duplication between federal and state requirements.  
2 This cooperation, to the fullest extent possible, shall include joint [~~environmental~~  
3 ~~impact statements~~] **EISs** with concurrent public review and processing at both  
4 levels of government. Where federal law has [~~environmental impact statement~~]  
5 **EIS** requirements in addition to but not in conflict with this chapter, the **office** and  
6 **agencies** shall cooperate in fulfilling the requirements so that one document shall  
7 comply with all applicable laws.  
8

9 (6) ~~Where the NEPA process requires earlier or more stringent public review, [and~~  
10 ~~processing] filing, and distribution than under this chapter, then that NEPA~~  
11 ~~process shall satisfy this chapter so that duplicative consultation or review do not~~  
12 ~~occur.~~<sup>597</sup> ~~The responsible federal entity's supplemental EIS requirements shall~~  
13 ~~apply in these cases in place of this chapter's supplemental EIS requirements.~~<sup>598</sup>  
14

15 (7) In all **actions** where the use of state land or funds is proposed, the final  
16 [~~statement~~] **EIS** shall be submitted to the governor or an authorized  
17 representative. In all **actions** when the use of county land or funds is proposed  
18 ~~and no use of state land or funds is proposed~~<sup>599</sup>, the final [~~statement~~] **EIS** shall be  
19 submitted to the mayor, or an authorized representative. The final [~~statement~~] **EIS**  
20 in these instances shall first be accepted by the governor or mayor (or an  
21 authorized representative), prior to the submission of the same to the  
22 [~~Environmental Protection Agency or~~]<sup>600</sup> responsible federal [~~agency~~] **entity**<sup>601</sup>.  
23

24 (8) Any **acceptance** obtained pursuant to [~~paragraphs (1) to (3)~~] ~~this section~~<sup>602</sup> shall  
25 satisfy chapter 343, HRS, and no other [~~statement~~] **EIS** for the proposed **action**  
26 shall be required.  
27

28 [Eff and comp \_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

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<sup>596</sup> Replaces defined term “agency” with entity to avoid confusion, because “agency” is defined by chapter 343, HRS to not include the federal government.

<sup>597</sup> Addresses, for example, situations where a federal agency's regulations may require a public scoping meeting prior to publishing a Notice of Intent to prepare an environmental impact statement and under chapter 343, HRS, the same action would also require a public scoping after the publication of an EISPN. This clause reduces the burden on the proposing agency or applicant to conduct two public scoping meetings.

<sup>598</sup> Clarifies that in the case of joint documents, the preparation of any supplemental documentation would be due to federal requirements and that HEPA supplemental requirements would not apply.

<sup>599</sup> Clarifies the condition that requires the mayor or the mayor's authorized representative to be the accepting authority.

<sup>600</sup> Clarifies that it is the responsible federal entity issuing the acceptance to reduce confusion about the role of the Environmental Protection Agency in these circumstances.

<sup>601</sup> Replaces defined term “agency” with entity to avoid any confusion.

<sup>602</sup> Changes language to “this section” instead of the enumerated paragraphs because existing paragraphs have been rearranged and additional paragraphs have been added.

1 Subchapter 13A Supplemental Environmental Impact  
2 Statements

- 3 • Describes the conditions for when a supplemental EIS is required by consolidating all  
4 language into one section.

5 § 11-200A-31A Supplemental Environmental Impact  
6 Statements<sup>603</sup>

- 7 (a) [A statement] **An EIS** that is accepted with respect to a particular **action** is usually  
8 qualified by the size, scope, location, intensity, use, and timing of the **action**, among  
9 other things. [A statement] **An EIS** that is accepted with respect to a particular **action**  
10 shall satisfy the requirements of this chapter and no [other] **supplemental** [statement]  
11 **EIS** for that proposed **action** shall be required, to the extent that the **action** has not  
12 changed substantively in size, scope, intensity, use, location or timing, among other  
13 things. If there is any change in any of these characteristics which may have a  
14 **significant effect**, the original **statement** that was changed shall no longer be valid  
15 because an essentially different **action** would be under consideration and a  
16 **supplemental** [statement] **EIS** shall be prepared and reviewed as provided by this  
17 chapter. As long as there is no change in a proposed **action** resulting in individual or  
18 **cumulative impacts** not originally disclosed, the [statement] **EIS** associated with that  
19 **action** shall be deemed to comply with this chapter.<sup>604</sup>  
20  
21 (b) The **accepting authority** or **approving agency** in coordination with the original  
22 **accepting authority** shall be responsible for determining whether a **supplemental**  
23 [statement] **EIS** is required. This determination will be submitted to the **office** for  
24 publication in the **periodic bulletin**. **Proposing agencies** or **applicants** shall prepare for  
25 public review **supplemental** [statements] **EISs** whenever the proposed **action** for which  
26 [a] **an**<sup>605</sup> [statement] **EIS** was accepted has been modified to the extent that new or  
27 different environmental **impacts** are anticipated. A **supplemental** [statement] **EIS** shall  
28 be warranted when the scope of an **action** has been substantially increased, when the  
29 intensity of environmental **impacts** will be increased, when the mitigating measures  
30 originally planned [~~are~~] **will**<sup>606</sup> not to be implemented, or where new circumstances or  
31 evidence have brought to light different or likely increased environmental **impacts** not  
32 previously dealt with.<sup>607</sup>

<sup>603</sup> Combines §§ 11-200-26 - 29, HAR (1996).

<sup>604</sup> Source: § 11-200-26, HAR (1996).

<sup>605</sup> Housekeeping.

<sup>606</sup> Housekeeping.

<sup>607</sup> Source: § 11-200-27, HAR (1996).

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- (d) The contents of the **supplemental [statement] EIS** 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]~~ **of subchapter 10A**<sup>608</sup> as they relate to the changes.<sup>609</sup>
- (e) The requirements of the thirty-day consultation, ~~[filing]~~ public notice **filing**<sup>610</sup>, distribution, the forty-five-day public review, comments and response, and **acceptance** procedures, shall be the same for the **supplemental [statement] EIS** as is prescribed by this chapter for an **EIS**.<sup>611</sup>

[Eff and comp \_\_\_\_\_] (Auth: HRS §343-5, 343-6) (Imp: HRS §343-5, 343-6)

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<sup>608</sup> Updates reference to relevant subchapter in chapter 11-200A, HAR.

<sup>609</sup> Source: § 11-200-28, HAR (1996).

<sup>610</sup> Stylistic change to increase readability.

<sup>611</sup> Source: § 11-200-29, HAR (1996).

## 1 Subchapter 14A Retroactivity and Severability

- 2 • Creates a retroactivity section to provide direction to agencies, applicants, and the  
3 general public on how actions undergoing environmental review when HAR Chapter 11-  
4 200A is enacted would remain under HAR Chapter 11-200 or transition to HAR Chapter  
5 11-200A.
- 6 • Includes the severability clause.

### 7 § 11-200A-32A Retroactivity<sup>612</sup>

8 (a) The rules shall apply immediately upon taking effect, except as otherwise provided  
9 below.<sup>613</sup>

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

13 (1) For **EAs**, if the **draft EA** was published by the **office**<sup>614</sup> prior to the adoption of  
14 HAR chapter 11-200A and has not received a determination within a period of five  
15 years from the implementation of HAR chapter 11-200A, then the **proposing**  
16 **agency** or **applicant** must comply with the requirements of HAR chapter 11-  
17 200A. All subsequent environmental review, including an **EISPN** must comply with  
18 HAR chapter 11-200A.

19 (2) For **EISs**, if the **EISPN** was published by the **office**<sup>615</sup> prior to the adoption of HAR  
20 chapter 11-200A and the final **EIS** has not been accepted within five years from  
21 the implementation of HAR chapter 11-200A, then the **proposing agency or**  
22 **applicant** must comply with the requirements of HAR chapter 11-200A.

23 (3) A judicial proceeding regarding the proposed **action** shall not count towards the  
24 five-year time period.<sup>616</sup>

612 Proposes a new section on when the revised rules take effect and how the revised rules apply to actions that have already completed the environmental review process or are undergoing it at the time the revised rules take effect.

613 Provides clarification the rules shall take effect and apply in all situations except under the cases as described in the subsections of this section.

614 Publication by the office requires that the document was submitted and met all requirements for publication.

615 Publication by the office requires that the document was submitted and met all requirements for publication.

616 Ensures that an action is not prevented from remaining under the 1996 rules (HAR chapter 11-200 (1996)) when it otherwise would be due to a judicial proceeding causing delay.

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

Environmental Council

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

This reorganization is referred to as HAR Chapter 11-200A

1 **(c)** **Exemption lists** that have received concurrence under HAR chapter 11-200 may be  
2 used for a period of seven years after the adoption of HAR chapter 11-200A, during  
3 which time the **agency** must revise its list and obtain concurrence from the **council** in  
4 conformance with HAR chapter 11-200A.<sup>617</sup>

5  
6  
7

[Eff and comp \_\_\_\_\_] (Auth: HRS § 343-6) (Imp: HRS § 343-6)

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<sup>617</sup> Provides a period of time for agencies to update their exemption lists from “classes” to “types” of action and reassign exemptions to the appropriate general types.

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This reorganization is referred to as HAR Chapter 11-200A

1 § 11-200A-33A Severability<sup>618</sup>

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

6

7 [Eff and comp \_\_\_\_\_] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-6, 343-8)

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<sup>618</sup> Formerly § 11-200-30, HAR (1996). All language in this section comes from § 11-200-30, HAR (1996) and no amendments are proposed.

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1 **Note**<sup>619</sup>

2 Historical Note: Chapter 11-200, HAR, is based substantially on the **Environmental Impact**  
3 **Statement** Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]  
4 Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the  
5 repeal of § 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996 following  
6 public hearings held on November 14, 1995, November 16, 1995, November 17, 1995,  
7 November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu  
8 Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii  
9 Tribune-Herald and Molokai Dispatch on October 12, 1995.

10  
11 Amendment in 2007 to section 11-200-8 to include an exemption class for affordable housing. It  
12 has not been compiled.

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<sup>619</sup> This Note would be revised following public hearing on the draft rules and finalization for enacting into law.