

Subchapter 10 Preparation of Environmental Impact Statements

§ 11-200.1-23 Consultation Prior to Filing a Draft Environmental Impact Statement

- (a) An **EISPN**, including one resulting from an **agency** authorizing the preparation of an **EIS** without first requiring an **EA**, shall indicate in a concise manner:
- (1) Identification of the **proposing agency** or **applicant**;
 - (2) Identification of the **accepting authority**;
 - (3) List of all required permits and **approvals** (State, federal, county) and, for **applicants**, identification of which **approval** necessitates chapter 343, HRS, environmental review;
 - (3) The determination to prepare an **EIS**;
 - (4) Reasons supporting the determination to prepare an **EIS**;
 - (5) A description of the proposed **action** and its location;
 - (6) A description of the affected **environment** and include regional, location, and site maps;
 - (7) Possible alternatives to the proposed **action**;
 - (8) The **proposing agency's** or **applicant's** proposed scoping process, including when and where the **EIS public scoping meeting** or meetings will be held; and
 - (9) The name, title, contact information, including the email address, physical address, and phone number of an individual representative of the **proposing agency** or **applicant** who may be contacted for further information.
- (b) In the preparation of a draft **EIS**, **proposing agencies** and **applicants** shall consult all appropriate **agencies**, ~~[noted in section 11-200-10(10), and other]~~ including the county agency responsible for implementing the county's general plan for each county in which the proposed **action** is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals [as noted in sections 11-200-9 and 11-200-9.4] that the proposing agency reasonably believes to be affected. To this end, **agencies** and **applicants** shall endeavor to develop a fully acceptable draft **EIS** prior to the time the draft **EIS** is filed with the **office**, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.
- (c) Upon publication of ~~[a preparation notice]~~ an **EISPN** in the **periodic bulletin**, agencies, groups, or individuals shall have a period of thirty days from the initial ~~[issue]~~ publication date ~~[in which to request to become a consulted party and]~~ to make written comments regarding the environmental **effects** of the proposed **action**. ~~[Upon written request by the consulted party and upon good cause shown,]~~ With good cause, the **approving**

agency or accepting authority may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the draft EIS pursuant to section 11-200.1-24. For purposes of the scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

- (d) ~~[At the discretion of the proposing agency or an applicant, a]~~ No fewer than one [An] EIS public scoping meeting ~~[to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth]~~ addressing the scope of the draft **EIS** ~~[may]~~ shall be held on the island(s) most affected by the proposed action, within the public review and comment period in subsection ~~[(b)]~~ (c) ~~[, provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d)].~~ The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the scoping meeting shall be audio recorded.
- ~~[(e)] [Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.]~~
- ~~[(d)] [Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the projects but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement.]~~

[Eff] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS § 343-6)

§ 11-200.1-24 Content Requirements; Draft Environmental Impact Statement

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

- (b) ~~[In the developing the EIS preparers shall make every effort to convey the required information succinctly in a form easily understood, both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, or length, or detail of the statement.]~~ The scope of the [statement] draft EIS may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a [statement] draft EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. [Statements] A draft EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the [statement] draft EIS, including cost benefit analyses and reports required under other legal authorities.
- (c) The level of detail in a draft EIS may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EIS for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the [planning] project level. Analysis of the program may be based on conceptual information in some cases and may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.
- (d) The draft EIS shall contain a summary sheet ~~[which]~~ that concisely discusses the following:
- (1) Brief description of the **action**;
 - (2) Significant beneficial and adverse **impacts** (including **cumulative impacts** and **secondary impacts**);
 - (3) Proposed mitigation measures;
 - (4) Alternatives considered;
 - (5) Unresolved issues; ~~and~~
 - (6) Compatibility with land use plans and policies, and listing of permits or **approvals**~~[-]; and~~
 - (7) A list of relevant documents for actions considered in the analysis of the preparation of the EIS.
- (e) The draft EIS shall contain a table of contents.
- (f) The draft EIS shall contain a separate and distinct section that includes ~~[a statement of]~~ the purpose and need for the proposed **action**.
- (g) The draft EIS shall contain a ~~[project]~~ description of the action ~~[which]~~ that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental **impact**:

- (1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps, or Floodway Boundary Maps as applicable) and a related regional map;
 - (2) ~~[Statement of objectives]~~ Objectives of the proposed action;
 - (3) General description of the **action's** technical, economic, social, cultural, and environmental characteristics;
 - (4) Use of ~~[public]~~ state or county funds or lands for the **action**;
 - (5) Phasing and timing of the action;
 - (6) Summary technical data, diagrams, and other information necessary to ~~[permit]~~ enable an evaluation of potential environmental **impact** by commenting agencies and the public; and
 - (7) Historic perspective.
- (h) The draft **EIS** shall describe in a separate and distinct section reasonable alternatives ~~[which] that~~ could attain the objectives of the **action** ~~[regardless of cost, in sufficient detail to explain why they were rejected]~~. The section shall include a rigorous exploration and objective evaluation of the environmental **impacts** of all such alternative **actions**. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental **effects**, costs, and risks of the action. Examples of alternatives include:
- (1) The alternative of no **action**;
 - (2) Alternatives requiring **actions** of a significantly different nature ~~[which] that~~ would provide similar benefits with different environmental **impacts**;
 - (3) Alternatives related to different designs or details of the proposed **actions** ~~[which] that~~ would present different environmental **impacts**;
 - (4) The alternative of postponing **action** pending further study; and,
 - (5) Alternative locations for the proposed ~~[project]~~ action.
- In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed **action** and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail. For any **agency actions**, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the **agency**.
- (i) The draft **EIS** shall include a description of the environmental setting, including a description of the **environment** in the vicinity of the **action**, as it exists before commencement of the **action**, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the **action** site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related **actions**, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall **cumulative impacts** of such **actions**. **Proposing agencies** and **applicants** shall also identify, where appropriate, population and growth characteristics of the affected area, ~~and~~ any population and growth assumptions used to

justify the **proposed action**, and ~~[determine]~~ **any** secondary population and growth **impacts** resulting from the proposed **action** and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted **in the draft EIS**.

- (j) The draft **EIS** shall include a ~~[statement]~~ **description** of the relationship of the proposed **action** to land use **and natural or cultural resource** plans, policies, and controls for the affected area. Discussion of how the proposed **action** may conform or conflict with objectives and specific terms of approved or proposed land use **and resource** plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the ~~[statement]~~ **draft EIS** shall describe the extent to which the **agency** or **applicant** has reconciled its proposed **action** with the plan, policy, or control, and the reasons why the **agency** or **applicant** has decided to proceed, notwithstanding the absence of full reconciliation.
- (k) The draft **EIS** shall also contain a list of necessary **approvals**, required for the **action**, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified **approval** shall also be described.
- (l) The draft **EIS** shall include ~~[a statement]~~ **an analysis** of the probable **impact** of the proposed **action** on the **environment**, and **impacts** of the natural or human **environment** on the ~~[project]~~ **action**. ~~[, which]~~ **This analysis** shall include consideration of all phases of the **action** and consideration of all consequences on the **environment** ~~[,]~~, **including direct and indirect effects** ~~[shall be included]~~. The interrelationships and cumulative environmental **impacts** of the proposed **action** and other related ~~[projects]~~ **actions** shall be discussed in the draft **EIS**. ~~[It should be realized]~~ **The draft EIS should recognize** that several **actions**, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource ~~[projects]~~ **actions**, etc.) may well stimulate or induce **secondary effects**. These **secondary effects** may be equally important as, or more important than, **primary effects**, and shall be thoroughly discussed to fully describe the probable **impact** of the proposed **action** on the **environment**. The population and growth **impacts** of an **action** shall be estimated if expected to be significant, and an evaluation **shall be** made of the **effects** of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed **action** constitutes a direct or indirect source of pollution as determined by any governmental **agency**, necessary data **regarding these impacts** shall be incorporated into the **EIS**. The significance of the **impacts** shall be discussed in terms of **subsections** ~~[(j), (k), (l), and (m)]~~ **(m), (n), (o), and (p)**.
- (m) The draft **EIS** shall include in a separate and distinct section a description of **the** relationship between local short-term uses of humanity's **environment** and the maintenance and enhancement of long-term productivity. The extent to which the proposed **action** involves trade-offs among short-term and long-term gains and losses

shall be discussed. The discussion shall include the extent to which the proposed **action** forecloses future options, narrows the range of beneficial uses of the **environment**, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed **action**.

- (n) The draft **EIS** shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed **action** should it be implemented. Identification of unavoidable **impacts** and the extent to which the **action** makes use of non-renewable resources during the phases of the **action**, or irreversibly curtails the range of potential uses of the **environment** shall also be included. The possibility of environmental accidents resulting from any phase of the **action** shall also be considered. [~~Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.~~]
- (o) The draft **EIS** shall address all probable adverse environmental **effects** ~~[which]~~ that cannot be avoided. Any adverse **effects** such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy ~~[such as that]~~ including those found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), [342N], 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, [shall be included, including] and those **effects** discussed in other [actions] subsections of this [paragraph] section [which] that are adverse and unavoidable under the proposed **action** must be addressed in the draft **EIS**. Also, the rationale for proceeding with a proposed **action**, notwithstanding unavoidable **effects**, shall be clearly set forth in this section. The draft **EIS** shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental **effects** of the proposed **action**. The draft [statement] **EIS** shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed **action** that would avoid some or all of the adverse environmental **effects**.
- (p) The draft **EIS** shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce ~~[impact]~~ impacts, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the **action** plan to reduce significant, unavoidable, adverse **impacts** to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a

particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. ~~[Included]~~ The draft EIS shall include, where possible ~~[and appropriate]~~, ~~[should be]~~ specific reference to the timing of each step proposed to be taken in ~~[the]~~ any mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.

- (q) The draft **EIS** shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the **action**, or what overriding reasons there are for proceeding without resolving the ~~[problems]~~ issues.
- (r) The draft **EIS** shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the **statement**, and shall disclose the identity of the **persons**, firms, or **agency** preparing the **statement**, by contract or other authorization~~[, shall be disclosed]~~.
- (s) The draft **EIS** shall include a separate and distinct section that contains:
- (1) ~~[reproductions]~~ Reproductions of all ~~[substantive]~~ written comments ~~[and responses made]~~ submitted during the ~~[consultation process]~~ consultation period required in section 11-200.1-23;
 - (2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. **Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:**
 - (A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commentor under that topic heading by issue. When grouping comments by topic and issue, the names of commentors who raised an issue under a topic heading shall be clearly identified in a distinctly labelled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commentor identified in each applicable topic area. All comments, except those described in subsection (3), must be appended in full to the final document; or
 - (B) By providing a separate and distinct response to each comment clearly identifying the commentor and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in (3), must either be included with the response, or appended in full to the final document;

- (3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:
 - (A) The response may be grouped under (2)(A) with the response to other comments under the same topic and issue with all commentors identified in the distinctly labelled section identifying commentors by topic; or
 - (B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commentors who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document; and
 - (C) Provided that, if a commentor adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (2);
 - (4) A summary of **any EIS public scoping meetings**, including a written general summary of the oral comments made, and a representative sample of any handout related to the **action** provided at the **EIS public scoping meeting(s)**;
 - (5) A list of those **persons** or **agencies** who were consulted and had no comment [shall be included in the draft **EIS**] in a manner indicating that no comment was provided; and
 - (6) A representative sample of the **agency** consultation request letter.
- (t) An **addendum** [document] to a draft environmental impact statement **EIS** shall reference the original draft [environmental impact statement] **EIS** to which it attaches [to] and comply with all applicable filing, public review, and comment requirements set forth in subchapter [7] 10.

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

§ 11-200.1-25 Public Review Requirements for Draft Environmental Impact Statements

- (a) Public review shall not substitute for early and open discussion with interested **persons** and **agencies** concerning the environmental **impacts** of a proposed **action**. Review of the **draft EIS**, shall serve to provide the public and other agencies an opportunity to discover the extent to which a **proposing agency** or **applicant** has examined environmental concerns and available alternatives.
- (b) The period for public review and for submitting written comments shall commence ~~as of~~ from the date that notice of availability of the draft **EIS** is initially issued in the **periodic bulletin** and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments to the ~~approving agency or~~ accepting authority, ~~whichever is applicable,~~ with a copy of the comments to the ~~applicant or~~ proposing agency or applicant, shall be received by or postmarked to the **approving agency** or **accepting authority**, within ~~said~~ the forty-five-day comment period. Any comments outside of the forty-five day comment period need not be ~~considered or~~ responded to nor considered.

[Eff] (Auth: HRS §§ 343-5, 343-6) (Imp: HRS §§ 343-5, 343-6)

§ 11-200.1-26 Comment Response Requirements for Draft Environmental Impact Statements

- (a) In accordance with the content requirements of section 11-200.1-27, [The] the **proposing agency** or **applicant** shall respond [in writing] within the **final EIS** to [the] all **substantive written comments** received by or postmarked to the approving agency during the forty-five-day review period. [and incorporate the comments and responses in the final EIS]. [The response to comments shall include:] In deciding whether a written comment is substantive, the **proposing agency** or **applicant** shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the **proposing agency** or **applicant** as non-substantive and to which no response was provided shall be clearly indicated.
- (b) **Proposing agencies** and **applicants** shall respond in the final EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:
- (1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commentor under that topic heading by issue. When grouping comments by topic and issue, the names of commentors who raised an issue under a topic heading shall be clearly identified in a distinctly labelled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed

Note

Historical Note: Chapter 11-200, HAR, is based substantially on the **Environmental Impact Statement** Regulations of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85] Amendments to and compilation of chapter 200, title 11, Hawaii Administrative Rules, and the repeal of § 11-200-11, Hawaii Administrative Rules were adopted on March 27, 1996 following public hearings held on November 14, 1995, November 16, 1995, November 17, 1995, November 20, 1995 and November 21, 1995 after public notice was given in the Honolulu Advertiser, Honolulu Star-Bulletin, Maui News, The Garden Island, West Hawaii Today, Hawaii Tribune-Herald and Molokai Dispatch on October 12, 1995.

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

This note will be updated pending adoption of the Proposed Rules.