



**THE ENVIRONMENTAL COUNCIL
Office of Environmental Quality and Control**

Tuesday October 31, 2017
10AM Capitol Room 325

COMMENTS

Re: Proposed Revisions to Regulations Implementing HRS Chapter 343

Mahalo for the opportunity to provide public comment on version 3 of the Preliminary Draft of Proposed Revisions to Hawai'i Administrative Rules section 11-200, Environmental Impact Statement Rules. On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i applauds this effort to improve these very important regulations.

We deeply appreciate the Environmental Council's thoughtful consideration of our comments and concerns. We have found this process extremely accessible and transparent. Thank you for addressing our previous comments regarding restoring cultural resources as a significance trigger, removing "independent utility" as it provides opportunity to improperly segment a project, and clarifying the use of and process for establishing exemptions.

Specifically on version 3, we offer the following comments:

Scoping meetings are best practice, should be mandatory

Proposed HAR 11-200A- 23A requires scoping meetings to be held prior to the EIS being released for public comment. Scoping meetings are recognized as a best practice in planning and facilitation. Requiring this best practice ensures the quality of EIS processes.

Substantial commencement and five year age limit are reasonable

Proposed HAR 11-200A-2A defines substantial commencement as the stage of the project where no additional approvals are required, design is complete, and financial commitments are in place. Providing this bright-line of commencement alleviates the current uncertainty of when a project may be required to return for additional environmental review. It also ensures that if more than five years has passed and the

project has not passed into the substantial commencement phase, then a supplemental environmental review could be required by the approving agency.

Response to every substantive comment should be required

Proposed HAR 11-200A-26A directs applicants and agencies to “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.” The purpose of Chapter 343 is to “establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making...” so that “environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.” Responding to every substantive comment received on a proposed project is the only way to fulfill this purpose.

Batching comments should not be allowed without strict and specific guidelines for what qualifies as similar comments. It is too easy for project proponents to improperly group comments for a single response as a method for obfuscating nuanced public concerns. Indeed, in the case of applicants, the financial incentive is to minimize the diversity of comments to the greatest extent possible. Strong regulations are the only tool to correct for that perverse incentive.

Affordable housing exemption may not be proper

Proposed HAR 11-200A-15A(11) exempts affordable housing projects satisfying certain parameters from environmental review. While we recognize the urgent need for affordable housing, we are not prepared to support a blanket exemption for all affordable housing projects in defined areas. This proposal requires far more extensive vetting. What areas meet the list of proposed prerequisites? What about housing that is temporarily offered as affordable at first and sold for market prices later?

Affordable communities deserve the same level of consideration, planning, and evaluation as the most luxurious communities in our islands. The environmental review process provides communities that opportunity to openly grapple with all of the implications of a proposed project. This process ensures the best possible project for a given area. No community should be denied this opportunity for the lack of money.