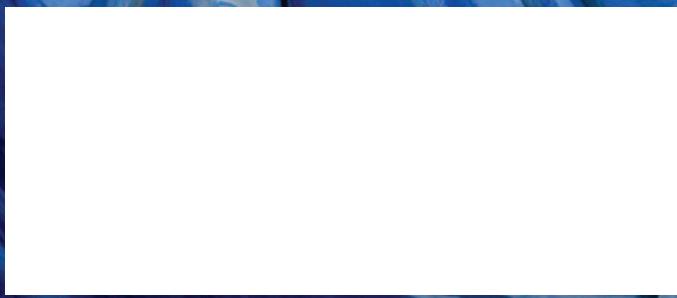



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# The New EIS Rules: Changes to the Hawai'i Environmental Review Process

by Lisa A. Bail and Alana T. Song

Changes to the Hawai'i Environmental Impact Statement Rules took effect as of August 9, 2019. The previous Hawai'i Administrative Rules Title 11 chapter 200 was repealed (the "1996 Rules") and Hawai'i Administrative Rules Title 11 chapter 200.1 was adopted in its place (the "Final Rules"). The language and intent of the Hawai'i Environmental Policy Act ("HEPA"),<sup>1</sup> however, remain unchanged: "to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations."<sup>2</sup>

This article reviews the phasing in of the Final Rules, and highlights certain changes to the rules.<sup>3</sup> The Final Rules describe a new category of *de minimis* actions exempt from environmental review, impose new requirements on agencies proposing exemption lists, and enact new requirements for content related to climate change. The Final Rules also set forth several new procedural requirements,



including a new method to determine whether a proposed action is covered under a previous environmental review document or exemption, and a new process allowing a proposed action to skip the interim Environmental Assessment ("EA") and instead prepare an Environmental Impact Statement ("EIS"). Moreover, the Final Rules impose new EIS scoping requirements, and allow responses to similar public comments to be grouped, following an analogous federal process under the National Environmental Policy Act ("NEPA"). Finally, the new rules

allow the public comment period for environmental review documents to be voluntarily extended.

### Five-Year Grandfathering of Ongoing Review

Although the Final Rules took effect several months ago, the Final Rules also provide that the 1996 Rules continue to apply to environmental reviews that began prior to adoption of the Final Rules.<sup>4</sup> This means that proposed actions that began prior to the adoption of the Final Rules are required to continue following the 1996 Rules. After five years, unless an environmental review has reached its conclusion, ongoing actions must follow the Final Rules.

Draft EAs that were published prior to the adoption of the Final Rules must follow the 1996 Rules until they receive a determination. If the determination is not received within five years from the implementation of the Final Rules, then the proposed action must comply with the Final Rules.<sup>5</sup> Similarly, if an EIS Preparation Notice (“EISPN”) was published by the Office of Environmental Quality Control (“OEQC”) prior to the implementation of the Final Rules, the EIS process continues under the 1996 Rules, but if the final EIS has not been accepted within five years of the implementation of the Final Rules, the proposed action must comply with the Final Rules.<sup>6</sup> The OEQC also intends that if an EIS was accepted before the enactment of the Final Rules, it will remain under the 1996 Rules “for purposes of supplemental EISs.”<sup>7</sup>

Furthermore, agencies’ existing exemption lists may be used for seven years after the adoption of the Final Rules. After that time, the agencies must revise their lists and present them to the Environmental Council for concurrence.<sup>8</sup>

### Across-the-Board Changes

#### Clarity and Consultation

Under the Final Rules, exemption notices, EAs and EISs must succinctly convey information in an easily understood and self-contained format. The substance of the information conveyed is given priority over the particular form or length of the document. Additionally, consultation must be “mutual, open and direct, two-way communication, in good faith” involving the meaningful participation of agencies and the public.<sup>9</sup>

#### Filing Requirements

The Final Rules contain new and detailed filing requirements for publication and withdrawal of environmental review documents. The OEQC may not accept untimely submittals or revisions after the publication deadline. Anything filed with the OEQC may be withdrawn by submitting a written letter regarding the withdrawal. Notices of the withdrawal of an anticipated FONSI or EISPN

must include a rationale and specify the documents to be withdrawn.<sup>10</sup>

#### Reorganization

The 1996 Rules were reorganized in the Final Rules to consolidate similar rules and to reflect the sequence of the environmental review process: consultation prior to preparing a draft EIS, content requirements for a draft EIS, public review of a draft EIS, comment responses for a draft EIS, content requirements for a final EIS, and the acceptability of a final EIS.<sup>11</sup> This reorganization of the rules necessitated an entirely new chapter, rather than a revision of the 1996 Rules.

#### Clarifications

One of the changes of note is the clarification between “approving agency” and “accepting authority.” The Final Rules have removed any reference to an “approving agency” and the term is instead replaced with “accepting authority” or removed when the two terms are referenced together. This change was made to reduce the confusion between the two terms that was created by HEPA’s use of both terms without a clear distinction.<sup>12</sup> The Final Rules also clarify that the OEQC will never serve as the accepting authority.<sup>13</sup> Other clarification changes include changing vague words with consistent abbreviations (e.g., “assessment” is changed to “EA” and “statement” is changed to “EIS”) and clarifying whether the EA or EIS being discussed is a “draft” or “final.”<sup>14</sup>

Additionally, definitions for “program” and “project” were added to distinguish be-

tween program-level review and project-based review that is site and time specific.<sup>15</sup> A “program” is a series of projects that may include multiple locations and is undertaken for a broad goal or





purpose.<sup>16</sup> In contrast, a “project” is a discrete undertaking at a specific location and time that has a specific goal or purpose.<sup>17</sup> The Final Rules allow programmatic review for analysis of the interactions of a number of planned projects or phases in a program. As further discussed below, if a “program EA” or a “program EIS” is prepared, the Final Rules allow an agency to determine that further review is not required if the proposed action was analyzed in a program EIS. This process is similar to the “tiering” to programmatic EISs allowed under NEPA.<sup>18</sup>

#### Emergency Actions

During a governor-declared state of emergency, agencies proposing an action must document that the emergency action was undertaken pursuant to a specific emergency proclamation. Emergency actions that have not substantially commenced within sixty days of the

emergency proclamation are subject to HEPA. Agencies must similarly document emergency actions taken when no emergency declaration is made, and also include those emergency actions on the list of exemption notices published by the agency in *The Environmental Notice*.<sup>19</sup>

#### Digital Transition

The Final Rules have digitized most mailing and print-copy requirements. For example, agencies and applicants must submit their materials electronically to the OEQC for publication in *The Environmental Notice*. Likewise, the OEQC is required to distribute *The Environmental Notice* electronically. The Final Rules only require paper copies in limited circumstances. One paper copy of the draft EA, final EA, EISPN or Draft EIS must be given to the “nearest state library in each county in which the proposed action is to occur,” and one paper copy of the draft

EA, final EA, EISPN or Draft EIS must be provided to the Hawai‘i Documents Center.<sup>20</sup>

#### Topical Changes

##### Use of Prior Review Documents

Section 11-200.1-11 was introduced to provide agencies with guidance on whether a proposed action is covered under a prior existing exemption, EA, or EIS. If the below criteria apply, the proposed action could be covered under the existing HEPA process. If the below criteria do not apply, the agency must determine if an exemption, EA, or EIS is appropriate by conducting a separate HEPA analysis.<sup>21</sup> According to this section, the agency may determine that an additional environmental review is not required because:

1. The proposed action was a component of, or is substantially similar



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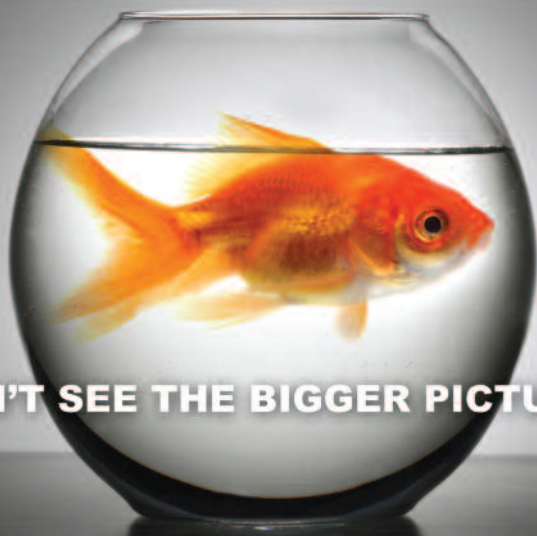
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to, an action that received an exemption, FONSI, or an accepted EIS (for example, a project that was analyzed in a program EIS);

2. The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, final EA, or accepted EIS; and

3. In the case of a final EA or an accepted EIS, the proposed action was analyzed within the range of alternatives.<sup>22</sup>

This section of the Final Rules was added to address situations where a program EIS analyzes a component of the program, and later in time that component is ready to be implemented.<sup>23</sup> Under Rule 11-200.1-11, an agency may determine that additional environmental review is not required if the proposed action is a component of an accepted EIS, it has similar direct, indirect, and cumulative effects as those analyzed in the program EIS, and the proposed action was analyzed as an alternative in the program EIS. The OEQC's rationale is that the proposed activity cannot be considered similar if there have been significant changes to the environmental conditions and information from what was analyzed in the accepted EIS.<sup>24</sup> If an agency makes the determination that a prior exemption, final EA, or accepted EIS does not satisfy the environmental review for a proposed action, the proposing agency must comply with the determination of significance requirements in subchapter 7 of the Final Rules to define the necessary level of environmental review for the proposed action.<sup>25</sup>

If an agency determines that the proposed action is covered by a prior exemption, FONSI or accepted EIS, the agency will publish a brief written rationale, and the proposed action may proceed.<sup>26</sup> The Final Rules accentuate the level of attention needed for this section's analysis by replacing the term "considerable" with "careful."<sup>27</sup> Once exemption

requirements are met, the proposing agency or applicant may proceed to permitting requirements beyond Chapter 343. As explained in the OEQC's rationale, this section "creates a consistent process and provides agencies with direction on what to consider when determining if a proposed action is covered under a prior exemption, final EA, or accepted EIS."<sup>28</sup>

### Exemptions

The Final Rules address exemptions in three categories: the general types of actions for which an exemption may be declared, direction for agencies on creating an exemption list, and guidelines for agencies on how to prepare an exemption notice.<sup>29</sup>

The Final Rules add *de minimis* actions to the exemption list, allowing agencies to alert staff to situations "where an activity might be in the gray area" of a project or program under HEPA but does not rise to the level of requiring an environmental review.<sup>30</sup> *De minimis* actions are clarified as "routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review."<sup>31</sup> The Final Rules also provide examples of these types of routine activities and ordinary functions:

- routine repair
- routine maintenance
- purchase of supplies
- continuing administrative activities involving personnel only
- nondestructive data collection
- installation of routine signs and markers
- financial transactions

- personnel-related matters
- construction or placement of minor structures accessory to existing facilities, and
- interior alterations involving things such as partitions, plumbing, and electrical conveyances.<sup>32</sup>

Under the Final Rules, agencies will develop exemption lists consistent with the Final Rules and HEPA. These new exemption lists will be in two parts. The first part of the exemption list will identify *de minimis* activities that are exempt from environmental review. The second part will identify general types of actions exempt from review such as maintenance of existing structures, replacement of structures and certain demolition activities.<sup>33</sup> Construction of new affordable housing is a newly added category of exempt action.<sup>34</sup>

For actions considered exempt under part two of an agency's exemption list, the agency must comply with new exemption notice requirements.<sup>35</sup> The agency must determine whether the action merits exemption, and whether significant cumulative impacts or particularly sensitive environments render the exemption inapplicable. This determination must be documented in writing, and must involve advice of agencies or individuals having "jurisdiction or expertise on the propriety of the exemption."<sup>36</sup> The exemption lists will be published in *The Environmental Notice* once a month. Exemption notices must be made available by agencies upon request,<sup>37</sup> but the Final Rules do not require their publication.<sup>38</sup>

As discussed above, under Sections 11-200-16(d) and 11-200.1-32(c), agencies have no longer than seven years to reorganize and update their exemption lists to comply with the Final Rules. The Final Rules still require agencies to obtain Environmental Council concurrence for their exemption lists every seven years, file lists of exemption notices with the OEQC every month, and produce exemption notices electronically to the public and other agencies upon request.<sup>39</sup>

### Climate Change

Rule revisions regarding climate change affect determinations for exemptions and whether an EIS is warranted. The key changes are found within the Significance Criteria section.<sup>40</sup> Subsection (b)(11) now requires proposing and approving agencies to consider whether a proposed action is likely to have a "substantial adverse effect on or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach,







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erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters" (new regulatory language emphasized). Examples of this type of damage include exacerbating coastal erosion or increasing exposure to hazards such as inundation.<sup>41</sup> The Environmental Council also requires inclusion of sea level rise maps in EAs and EISs,

Agencies must also consider whether the proposed action will be impacted by sea level rise. The Final Proposed Rules also clarify that the state sea level rise exposure area maps should be included in EAs and EISs to demonstrate the potential vulnerability of a proposed action. The [Environmental] Council views these revisions as meeting the directive to the Council in Act 17, Session Laws of Hawaii 2018, to promulgate rules for EAs and EISs to examine sea level rise.<sup>42</sup>

This sea level rise exposure area criterion was added to address concerns "related to climate change adaptation such as impacts from sea level rise, increased hurricane frequency and/or intensity, and endangered species migration."<sup>43</sup> The Environmental Council notes that the list is not a comprehensive one "and other areas may be considered environmentally sensitive, including areas likely to experience wave inundation, increased exposure to hurricanes, or flooding outside of a designated flood plain."<sup>44</sup>

Subsection (b)(13) now requires agencies to consider whether a proposed project will "emit substantial greenhouse gasses." This criterion was added by the Environmental Council to address the "well-established science that greenhouse gas emissions have a cumulative impact and have more sources beyond fossil fuel burning. A proposed action having substantial emissions (relative to the State of Hawaii) may not be the result of energy use, especially as Hawaii progresses toward its 100% renewable energy goal."<sup>45</sup>

The *Hawai'i Sea Level Rise Vulnerability and Adaptation Report* (released December 2017) calls upon the OEQC to create guidance on addressing climate change in EAs and EISs. The Report articulates that the "guidance should be modeled after new federal guidance issued by the U.S. Council on Environmental Quality for federal departments and agencies on consideration of GHG emissions and the effects of climate change (State of Hawai'i OEQC 2016)."<sup>46</sup> In preparing the eventual guidance, the OEQC will utilize the Final Emissions and the Effects of Climate Change in NEPA Reviews, issued by the federal Council on Environmental Quality Control on August 5, 2016.<sup>47</sup>

### Direct-to-EIS

In 2012, the Legislature amended Hawai'i Revised Statutes chapter 343 to allow proposing agencies to authorize applicants to prepare an EIS, skipping the interim EA, when there is a clear potential for a significant impact.<sup>48</sup> The 1996 Rules, though, did not reflect this statutory change and still called for an EA to be prepared prior to an EIS. Therefore, the Final Rules standardize the EISPN requirements regardless of how a proposing agency or applicant begins an EIS. The 1996 Rules had minimal content requirements for an EISPN because the rules assumed that the EA would be done before an EISPN.<sup>49</sup>

The Final Rules have amended the definition of EISPN to allow for the preparation of an EIS "based on either an EA or an agency's judgment and experience that the proposed action may have a significant effect on the environment."<sup>50</sup> This allows for an EIS to begin at the EISPN stage without first preparing an EA. The Final Rules also acknowledge that an EISPN may "result from an agency authorizing the preparation of an EIS without first requiring an EA . . . ."<sup>51</sup> A public scoping meeting is required by the Final Rules, as described below, and the public feedback from that meeting

must be included in the draft EIS.<sup>52</sup> The intent behind the changes in this section is to increase efficiency in the process by continuing straight to an EIS but still providing adequate opportunity for the public to provide their comments on an action.<sup>53</sup>

#### Scoping Meetings

The Final Rules require an EIS public scoping meeting on each island most affected by the proposed action. "No fewer than one EIS public scoping meeting addressing the scope of the draft EIS shall be held on the island or islands most affected by the proposed action, within the public review and comment period . . . ."<sup>54</sup> This requirement was created to better inform the public about proposed actions and also give proposing agencies and applicants the opportunity to engage the public in a meaningful manner.<sup>55</sup>

The Final Rules have removed the requirement for proposing agencies and applicants to transcribe oral public scoping comments and provide a written response for each comment. Scoping meetings under the Final Rules must now include a separate portion of the meeting for oral public comments, and that portion of the meeting will be audio recorded.<sup>56</sup> Rather than requiring a written response to the comments, a summary of the oral comments must be included in the draft EIS.<sup>57</sup> The requirement to provide written responses to written scoping comments still remains.<sup>58</sup>

#### Public Review and Response Requirements

The digitization of the review process has alleviated the redundant steps that required proposing agencies and applicants to mail individual responses to commentators, in addition to publishing those responses in the Final EA or EIS. Responses are now easily viewed in the EA, EIS, or other environmental review document posted on the OEQC website. The Final Rules therefore eliminate the heavy burden of responding to individual comments.



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The 1996 Rules required proposing agencies and applicants to respond individually to every comment received during the review period. The public review and response requirements under the 1996 Rules are a key example of how EIS procedures can create extraordinary burden without producing useful information for decision-making. The 1996 Rules resulted in concern regarding “comment bombing” where voluminous and repetitive comments could be used to overwhelm the EA and EIS process.<sup>59</sup> The Council specifically reasoned that “responding to individual comments can be extremely burdensome for proposing agencies and applicants, particularly with the increasing number of form letters and petitions submitted during the public comment period.”<sup>60</sup> The Final Rules have streamlined this process by focusing on the content of the comments and the issues they raise rather than requiring separate responses for each individual comment. This new streamlined process follows similar procedures under NEPA. Form letter or petition comments that contain identical or near-identical language may now be grouped together for purposes of response.<sup>61</sup>

#### Extended Comment Periods

The Final Rules add a section that allows an agency or applicant to extend their public comment period by republishing a Draft EA or EIS.<sup>62</sup> Hawai‘i Revised Statutes Section 343-5(e) does not discuss extending public comment periods but allows for an applicant to request an agency to extend the acceptance period by 15 days. Under the 1996 Rules, agencies offered extended comment periods but these extensions often created confusion in the environmental review process. The confusion under the 1996 Rules was caused when proposing agencies, applicants, and approving agencies wanted to extend comment periods outside the standard time period for public comment or beyond the notification process through the periodic bulletin. This in turn would create inconsistencies in the process and uncertainty in public notification and standing.<sup>63</sup>

The new section on republication in the Final Rules was added to provide a clear window for additional comment time.<sup>64</sup> Any comments received during this republication period are treated as if they were from the initial publication period. The Environmental Council, however, cautions that comments received during the time between the publication periods “do not have legal standing because they are not submitted during a legal window.”<sup>65</sup>

#### HEPA and NEPA Congruency

The Final Rules have aimed to create more parallelism between the federal and state environmental review process to create more ease for those proposed actions that require

both reviews.<sup>66</sup> This is consistent with Chapter 343, which directs the OEQC and state agencies to cooperate with federal agencies to reduce duplication between HEPA and NEPA requirements and encourages preparation of joint EISs.<sup>67</sup> To create this greater level of efficiency, the Final Rules allow a proposing agency or applicant to prepare one document and conduct one comment period that will satisfy the federal and state requirements as long as the document meets HEPA requirements.<sup>68</sup> The Final Rules provide that a NEPA EIS prepared by a federal agency may be submitted, so long as HEPA EIS content requirements, including cultural impacts, are met. However, a document found inadequate under NEPA may not be submitted to comply with HEPA.<sup>69</sup>

Federal determinations under NEPA do not necessarily control HEPA determinations. A federal categorical exclusion does not automatically result in a state exemption under chapter 343.<sup>70</sup> Nor does a federal FONSI automatically mean that an EIS is not required under NEPA.<sup>71</sup> In both of these cases, state and county agencies must still independently evaluate HEPA requirements to determine whether the proposed action is exempt, requires an EA or may proceed directly to preparing an EIS.<sup>72</sup> Once that judgment is made, the agency can determine whether the NEPA document satisfies HEPA’s required level of review. Duplicative consultation or review is eliminated by the provision in the Final Rules stating that a NEPA process requiring earlier or more stringent public review shall also satisfy HEPA.<sup>73</sup>

#### Conclusion

The Final Rules bring environmental review requirements current with digital technology practices. They also provide a clearer process for reliance on previous environmental review documents and exemptions, and a more efficient process for allowing proposed actions to proceed directly to an EIS where appropriate. Finally, provisions in the Final Rules allowing greater congruity between NEPA and HEPA environmental review processes bring the Hawai‘i EIS rules in line with HEPA’s contemplation of cooperation in joint review conducted under both federal and state law.

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<sup>1</sup> Hawai‘i Revised Statutes chapter 343. The Hawai‘i Environmental Policy Act is variously referred to as “Chapter 343” and “HEPA” throughout this article.

<sup>2</sup> Hawai‘i Revised Statutes § 343-1.

<sup>3</sup> The authors acknowledge the significant effort of the Environmental Council, the OEQC and its former director, Scott Glenn, that began in 2011 and included the several iterations of the draft rules

that evolved during the public input process. For a comprehensive summary of all changes to the rules, the OEQC has made available its *Rules Rationale Appendix 2: Unofficial Ramseyer format showing changes from the existing rules to Final*, OEQC (2019), [http://oeqc2.doh.hawaii.gov/Laws/v2.0-Proposed-HAR-11-200.1-Rules-Rationale-App-2-Ramseyer-Unofficial\\_96-2.0.pdf](http://oeqc2.doh.hawaii.gov/Laws/v2.0-Proposed-HAR-11-200.1-Rules-Rationale-App-2-Ramseyer-Unofficial_96-2.0.pdf).

<sup>4</sup> Haw. Admin. R. § 11-200.1-32.

<sup>5</sup> Haw. Admin. R. § 11-200.1-32(b)(1).

<sup>6</sup> Haw. Admin. R. § 11-200.1-32(b)(2).

<sup>7</sup> State of Hawai'i Environmental Council, *Rationale for Final Proposed HAR Chapter 11-200.1*, OEQC (2019) at p. 25, [http://oeqc2.doh.hawaii.gov/Laws/v2.0-Proposed-HAR-11-200.1-Rules-Rationale\\_Final.pdf](http://oeqc2.doh.hawaii.gov/Laws/v2.0-Proposed-HAR-11-200.1-Rules-Rationale_Final.pdf) [hereinafter *Rationale for Final Proposed HAR*].

<sup>8</sup> Haw. Admin. R. § 11-200.1-32(c).

<sup>9</sup> Haw. Admin. R. § 11-200.1-1(c).

<sup>10</sup> Haw. Admin. R. § 11-200.1-5.

<sup>11</sup> *Rationale for Final Proposed HAR* at 12.

<sup>12</sup> See generally Haw. Rev. Stat. § 343.

<sup>13</sup> Haw. Admin. R. § 11-200.1-7(f).

<sup>14</sup> *Rationale for Final Proposed HAR* at 15.

<sup>15</sup> Haw. Admin. R. § 11-200.1-2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Rationale for Final Proposed HAR* at 16-17; Haw. Admin. R. § 11-200.1-11(a)(1).

<sup>19</sup> Haw. Admin. R. § 11-200.1-8.

<sup>20</sup> Haw. Admin. R. § 11-200.1-5(e).

<sup>21</sup> *Rationale for Final Proposed HAR* at 17-18. The Hawai'i Supreme Court discussed the terms "program" and "project" in *Umberger v. Department of Land and Natural Resources*, 140 Hawai'i 500, 507, 403 P.3d 277, 284 (2017), recognizing that those terms are not defined in HRS Chapter 343.

<sup>22</sup> Haw. Admin. R. § 11-200.1-11(a)(3).

<sup>23</sup> *Rationale for Final Proposed HAR* at 38.

<sup>24</sup> *Id.*

<sup>25</sup> Haw. Admin. R. § 11-200.1-11(c).

<sup>26</sup> Haw. Admin. R. § 11-200.1-11(b).

<sup>27</sup> *Rationale for Final Proposed HAR* at 39; Haw. Admin. R. § 11-200.1-11(d).

<sup>28</sup> *Rationale for Final Proposed HAR* at 39.

<sup>29</sup> *Id.* at 44; Haw. Admin. R. §§ 11-200.1-15 through 11-200.1-17.

<sup>30</sup> *Rationale for Final Proposed HAR* at 24.

<sup>31</sup> Haw. Admin. R. § 11-200.1-2 (definition of "exemption list").

<sup>32</sup> Haw. Admin. R. § 11-200.1-16(a)-(b).

<sup>33</sup> Haw. Admin. R. § 11-200.1-16.

<sup>34</sup> Haw. Admin. R. § 11-200.1-15(c)(10).

<sup>35</sup> Haw. Admin. R. § 11-200.1-16(c).

<sup>36</sup> Haw. Admin. R. § 11-200.1-17(b).

<sup>37</sup> Haw. Admin. R. § 11-200.1-17(c).

<sup>38</sup> *Rationale for Final Proposed HAR* at 48.

<sup>39</sup> *Id.*

<sup>40</sup> Haw. Admin. R. § 11-200.1-13.

<sup>41</sup> *Rationale for Final Proposed HAR* at 20.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 42.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 43.

<sup>46</sup> Hawai'i Climate Change Mitigation and Adaptation Commission, Hawai'i Sea Level Rise Vulnerability and Adaptation Report (Tetra Tech, Inc. et. al., 2017) at 227.

<sup>47</sup> *Rationale for Final Proposed HAR* at 20. Referencing 81 FR 51866, available at

<https://www.federalregister.gov/documents/2016/08/05/2016/08/05/2016-18620/final-guidance-for-federal-departments-and-agencies-on-consideration-of-greenhouse-gas-emissions-and>.

<sup>48</sup> Haw. Rev. Stat. § 343-5(e).

<sup>49</sup> *Rationale for Final Proposed HAR* at 21.

<sup>50</sup> Haw. Admin. R. § 11-200.1-2.

<sup>51</sup> Haw. Admin. R. § 11-200.1-23.

<sup>52</sup> *Rationale for Final Proposed HAR* at 21.

<sup>53</sup> *Id.*

<sup>54</sup> Haw. Admin. R. § 11-200.1-23(d).

<sup>55</sup> *Rationale for Final Proposed HAR* at 24.

<sup>56</sup> Haw. Admin. R. § 11-200.1-23(d).

<sup>57</sup> *Rationale for Final Proposed HAR* at 24.

<sup>58</sup> Haw. Admin. R. § 11-200.1-24.

<sup>59</sup> Interview with Lisa Munger, Goodsill Anderson Quinn & Stifel, in Honolulu, Hawai'i (Dec. 11, 2019).

<sup>60</sup> *Rationale for Final Proposed HAR* at 52.

<sup>61</sup> Haw. Admin. R. § 11-200.1-26(c).

<sup>62</sup> Haw. Admin. R. § 11-200.1-6.

<sup>63</sup> *Rationale for Final Proposed HAR* at 34.

<sup>64</sup> *Id.* at 21.

<sup>65</sup> *Id.*

<sup>66</sup> Haw. Admin. R. § 11-200.1-31(4).

<sup>67</sup> Haw. Rev. Stat. § 343-5(h).

<sup>68</sup> *Rationale for Final Proposed HAR* at 24.

<sup>69</sup> Haw. Admin. R. § 11-200.1-31(4).

<sup>70</sup> *Rationale for Final Proposed HAR* at 64; Haw. Admin. R. § 11-200.1-31(1).

<sup>71</sup> Haw. Admin. R. § 11-200.1-31(2).

<sup>72</sup> Haw. Admin. R. § 11-200.1-31(1); *Rationale for Final Proposed HAR* at 64.

<sup>73</sup> Haw. Admin. R. § 11-200.1-31(6).

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