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# University of Hawaii at Manoa

## Environmental Center

Maile Bldg. 10 • 2540 Maile Way

Honolulu, Hawaii 96822

Telephone (808) 948-7361

Office of the Director

## THE NEW STATE EIS SYSTEM AND PROPOSED EQC RULES AND REGULATIONS

Statement for the  
Environmental Quality Commission  
Public Hearing, 27 November 1974

by Doak C. Cox, Director  
University of Hawaii Environmental Center

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THE NEW STATE EIS SYSTEM  
AND PROPOSED EQC RULES AND REGULATIONS

The comments presented herein were prepared in consultation with the EIS subcommittee of the Policy Committee of the Environmental Center. The membership of the subcommittee is as follows:

Julian Gresser (Law)  
Robert L. Pecsok (Chemistry)  
Edward D. Stroup (Oceanography)

The comments do not represent an institutional position of the University of Hawaii.

General Comments

Act 246 of the 1974 legislature and the rules and regulations proposed by the Environmental Quality Commission (EQC) pursuant to that Act define an Environmental Impact Statement (EIS) system. An EIS itself is simply a document that describes the environmental effects of a particular action.

In reviewing these rules and regulations it is important to keep in mind the aims of such a system, which are not merely:

a) to identify and appraise the total environmental effects of proposed actions;

but also:

b) to influence the development of the plans for the actions in the light of the environmental effects; and

c) to influence the decisions whether or not the actions should proceed in the light of the environmental effects.

Act 246 transferred to a statutory base the state Environmental Impact Statement (EIS) system that was formerly based on an executive order of the governor, modified the system somewhat, and enlarged it to include county actions and certain categories of private actions. The rules and regulations are necessarily limited to what was authorized by the Act. Criticism of what may seem to be defects in the rules and regulations are not here pertinent if the defects stem from the Act itself.

Within the limitations of the Act, the proposed rules and regulations have been more thoughtfully and carefully drafted than any legislation or regulations

previously reviewed by the Environmental Center. Particular commendation is due respecting:

1. The distinction between acceptance of an EIS and approval of the project to which it pertains (in Reg. sec. 1.6(a)) and the expression of the relationship of the acceptability of an EIS to the approval of the project (in Reg. sec. 1.70).

2. The encouragement (in Reg. sec. 1.41) of the use of a consultative process in the development of an EIS, which will materially facilitate the subsequent process of formal review.

3. The encouragement to EIS preparers (in Reg. sec. 1.43) to develop an EIS outline that presents the required contents in a succinct and informative manner rather than in accordance with a prescribed outline, which will result in a considerable reduction in length and redundancy and a considerable increase in clarity in EIS's.

4. The provisions (in Reg. secs. 2.00, 2.10, and 2.11) for requirement of supplemental EIS's under certain circumstances.

#### The new EIS system

##### Description

In discussing the EIS system it will be useful to recognize that it accomplishes its intent of focussing on the environmental consequences of proposed actions, in the processes of planning for and determining to carry through the actions, through an essentially iterative process. Major iterative cycles identified in the proposed regulations are:

- A. An assessment cycle,
- B. A consultation cycle,
- C. The formal review cycle,
- D. A recommendation cycle,
- E. An appeal cycle, and
- F. A complex supplemental-EIS process.

Although the regulations do not recognize it, there is still another possible complex process:

- G. A "try-again" process.

Finally, there is another complex process that is recognized by the regulations:

- H. The judicial process.

The principal parties in the process are the proposer of the action, which may be either a private party or a government agency, and the approver of the action, which will be a government agency for privately proposed actions or the chief executor of the State or a county for most agency-proposed actions. Some agency-proposed actions must be subject to approval by another agency, in which case the second agency is the approver. Although the determination of the need for or of the acceptability of an EIS should be regarded as distinct from the approval of the action to which the EIS relates, Act 246 and the regulations place the powers of such determinations with the approvers except in cycles A, E, and H.

With respect to any proposed action, the iterative process may be terminated at any stage by the proposer through a decision to withdraw the proposal, temporarily or permanently.

At the end of assessment cycle A, the process may be terminated by the approver by determination that an EIS is not required. The process may also be terminated at this point by a determination by the proposer that an EIS is not required, if the proposer is a government agency.

The process may not be terminated at the end of consultation cycle B save by the proposer through withdrawal. If cycle B is begun, the normal termination of the process will presumably be at the end of review cycle C, through a determination by the approver that the EIS is acceptable or not acceptable.

Recommendation cycle D may be invoked by either a proposer or an agency approver. Because only a recommendation will result from this cycle, and the decision remains with the approver, this cycle may be regarded merely as optional subcycle of cycle C.

Appeal cycle E may be invoked only at the option of a private proposer dissatisfied with a determination at the end of cycle E. If cycle E is involved, the power of EIS acceptance is transferred to the EQC.

The invocation of the supplemental EIS process, F, is optional with the approver. The invocation itself is essentially a reiteration of cycle A; the process must involve cycles B and C; and it might involve cycles D and E as well.

A proposer may begin the "try-again" process, G, after a voluntary withdrawal from the process or after an earlier adverse determination from cycles E, or H. This process will involve at least cycles B and C and may involve the later cycles as well.

The judicial process, H, may be initiated by a proposer dissatisfied with a determination following cycles A, C or E. It will presumably rarely be initiated by an approver, although it might theoretically be involved by an approving agency dissatisfied by an adverse decision by EQC on review. This is the only process that may be initiated by a party other than the proposer or the approver. Through the judicial process, which itself may involve several cycles, the approval power may be taken over by the courts or may be returned to the original approver.



In cycle A, if the action is proposed by a government agency and does not require the approval of another government agency, the entire assessment process may be carried out within the approving agency. All other cycles must involve at least two parties, the proposer and the approver.

Public notice is required of a determination at the end of cycle A, of the initiation of cycle C, of a determination at the end of cycle C, of a recommendation resulting from cycle D, and of a determination at the end of cycles E and H. In the proposed regulations EQC encourages wide involvement in cycle B, but such involvement is optional with the proposer. Only in cycles C and H, can members of the public be involved at their own initiative, and their involvement in the latter cycle is limited by Act 246.

#### Discussion

The new system lacks the degree of centralization that the Office of Environmental Quality Control (OEQC) provided in the old State EIS system. For example, in the old system, the OEQC was consulted by an agency proposing an action in the determination whether or not an EIS was necessary for that action. The OEQC could also make a recommendation concerning the acceptability of an EIS. To judge from the proposed rules and regulations, OEQC's role in the new system will be reduced to mechanical coordination of the formal review process, cycle C.

To judge from the proposed rules and regulations, EQC does not see itself as taking over the central position formerly occupied by OEQC. EQC's role appears to be restricted to formulation and adoption of the rules and regulations, the preparation of recommendations (by request only), and the consideration of appeals.

Presumably the Governor, by a new executive order, could restore to the OEQC those powers that it will otherwise lose in the new system, that are not prohibited by Act 246, and that are not assumed by EQC as provided by the Act or the rules and regulations. Such restoration of coordinating authority is desirable, particularly in the case of state-agency proposed actions in the assessment and in EIS-acceptance stages.

The counties might presumably provide for OEQC's exercise of a similar function with respect to County agency actions. This also would be desirable, recognizing that OEQC's authority in this case would be only advisory.

#### Recommendation

To the extent that EQC does not take over the former coordinating and advisory powers of the OEQC, and to the extent permissible by Act 246, it is recommended that its former coordinating and advisory powers be restored to OEQC.

## Document preparation and content requirements

### Discussion

In discussing the requirements for the preparation and the content of the various documents prescribed in the proposed regulations, it will be useful to distinguish the major types of information actually or appropriately called for, as follows:

- a. Identifications of proposers of actions, the actions they proposed, and approving agencies.
- b. Descriptions of the actions and their potential environmental effects.
- c. Notices of determinations.

In this classification, comments received through reviews relating to environmental impacts are to be regarded as contributions to the description of the actions and the potential environmental effects.

The identifications should be included in every document. In the proposed regulations, the identity of the proposer is explicitly called for only in the documents submitted for and resulting from assessment, and those submitted for consultation. It is surely to be expected in the case of the other documents. Inclusion of the identification of the approvers is specified only in the documents resulting from assessment and submitted for consultation. It also is surely to be expected in the case of the other documents.

In the assessment cycle, A, the description of actions and their effects needs to be sufficient only to permit determination of whether a full EIS should or should not be required. In this cycle, in the case of a private action or of an agency action subject to approval of another agency, the responsibility for description of the effects appears to rest primarily with the approver. In the case of an agency-proposed action not subject to approval by another agency, the entire responsibility for description rests with the proposer. Notices of assessment determination will be made by the approver in the case of privately proposed actions and agency-proposed actions subject to another agency approval. All notices of assessment determination will be made public through the EQC's bulletin. A bulletin notice may include merely the pertinent identifications and the determination itself.

The description portions of documents submitted for the consultative cycle, B, and the review cycle, C, and for determination at the end of the review cycle or submission for recommendation or appeal in cycles D, E, and H. ought to be regarded as successively expanded and validated versions of the initial description in cycle A. Unfortunately the proposed regulations do not specify that the description contents of the documents submitted for the consultative cycle E be expanded beyond the content in cycle A. Proposers should recognize that it will be much to their advantage to include in the document submitted for cycle B as much as possible of what will be required in cycle C. Otherwise, the result of cycle C, with its time limits, is likely to result in the non-acceptance of the EIS at the end of cycle C.

The proposed regulations wisely advise that the presentation in the EIS submitted for cycle C should be such as "to convey the required information succinctly in a form easily understood" (Reg. sec. 1.43). Failure of the proposer to follow this advice in the preparation of an EIS submitted for cycle C should not be excused, even though the regulations require submission and discussion out of context of the major consultative comments resulting from cycle B (sec. 1.41 m-o).

Because the period for response to review comments is so short in the case of private actions (14 days: Reg. sec. 1.72 (b)), it will frequently not be possible for the proposer to incorporate all responses in context in the EIS as it is submitted for acceptance at the end of the review cycle. The regulations therefore permit a proposer to append the comments and respective responses to his EIS. Substantial changes or disagreements could easily be lost sight of in appended comments and responses, and discussion of significant changes should be added to the EIS text summary of issues unresolved in the consultative cycle (Reg. sec. 1.42 (o)). To the greatest extent that time permits, responses to reviews should be reflected in context in the EIS itself.

The complete document submitted for acceptance, or for a recommendation prior to the acceptance determination, should consist of the EIS as modified by the review together with all appended comments and responses.

Complete discussion of the analysis of environmental effects of an action within the EIS is of course impossible. Reference to standard methods of analysis should suffice, for example, without incorporation of the entire methods and their rationale. An EIS may appropriately cite reports of pertinent studies in justifying the use of the results of such studies, but if so the reports must be available to the public.

Reports by approvers on the acceptance or non-acceptance of EIS and reports by EQC responsive to requests for recommendations and to appeals, will appropriately be required, as provided in the regulations to include salient findings as well as the determinations themselves.

Notices of the submission of EIS's to the review cycle, notices of the acceptance or non-acceptance of EIS's, notices of EQC recommendations as to the acceptability of EIS's, and notices of decisions by EQC on appeals, will be made to the public through the bulletins. A bulletin notice may include merely the pertinent identifications and the availability of the EIS for review or, as pertinent, the determination, recommendation, or decision. It may contain additional findings but a bulletin notice cannot be expected to contain all of the information in the EIS.

#### Recommendations

It is recommended:

- a. That EQC regulations prescribe, for the major documents submitted to successive cycles of the EIS process, successively expanded description contents.
- b. In particular, that the contents prescribed for the document submitted to the consultative cycle for preparation of an EIS (or at least for a document submitted during that cycle) be essentially identical to the contents prescribed

for the EIS itself.

c. That the consultative cycle (or at least the latter part of that cycle) be coordinated in the same manner as the review cycle.

d. That substantial changes resulting from the review of an EIS and disagreements unreconciled in the review, be reflected, as far as possible, in context in the EIS itself, and summarized in the section of the EIS on unreconciled differences.

#### The role of the Environmental Center

There is no recognition in the proposed rules or regulations of the role of the Environmental Center in the EIS process. Lack of formal recognition may be appropriate, because, at best, the extent of the Center's participation must be, in part, optional with the Center. However, no recognition can now be made of the Center's future role, because this future role has not been defined. The potential future role of the Center is best indicated by reference to its role in the past, a role especially related to the EIS review process.

#### Importance of reviews

Responsibility for the preparation of an EIS might be placed on some agency considered disinterested in the action. Although a disinterested agency might be considered unbiased with respect to the action and its environmental effects, the placement of the EIS-preparation responsibility on such an agency would decouple the consideration of environmental impacts from the development of plans. The development of plans most satisfactory from an environmental standpoint is promoted by close coupling of the consideration of environmental effects with the development of plans, and hence by making the proposer of the action responsible for the preparation of the EIS. A proposing agency is obviously likely to have a bias in favor of the action and, hence, against the identification of environmental detriments that may result. An offset to this bias must be provided in the process of EIS review.

In the federal EIS system, in the state system that was initiated by an executive order of the governor, and in the new state system that is to be established in accordance with Act 246, the proposer of an action is responsible for the preparation of the pertinent EIS. In each of these systems, provision for thorough review is therefore essential to the success of the system. No single agency can be expected to have the broad competence necessary for thorough review of all aspects of an EIS. Provision is therefore appropriately made in the federal system, the present state system, and the new state system for review by all concerned governmental agencies and by the concerned public.

#### Past Center Role

Early in the history of the Environmental Center, the provision of University competence to the review of Environmental Impact Statements (EIS's) was seen as an important service that the Center might perform. Even before the Office of Environmental Quality (OEQC) began to function, the Department of Planning and Economic Development (DPED), which was serving temporarily as the clearinghouse for federal EIS reviews, sent all EIS's pertinent to Hawaii to the Center. The Center solicited review comments from the wider University



community, coordinated these comments, and reported back to DPED. The University and Center involvement in the review process continued when the OEQC took over from DPED the State coordinating function, and later when the first State EIS system was initiated by executive order of the Governor. Initially every EIS that was referred to it was reviewed by the Center, but as the load of State EIS's was added to the load of federal EIS's the Center was forced to restrict the number of reviews to maintain high quality. In recent experience the Center receives all Hawaiian EIS's (federal and state) and reviews about half of them.

Recognizing that: "Its membership shall be comprised of those members of the University community actively concerned with ecological and environmental problems" [HRS 341-5], and recognizing that no single person nor small group can even discern the significant questions that should be addressed in an EIS, the Center has adopted a policy involving both direct solicitation and open invitation to the participation in the selection of EIS's for review and in the actual reviews. All are listed as they are received in the Manoa Campus Bulletin. The Center's internal staff makes initial judgments as to which statements especially merit review, what aspects ought especially to be reviewed, and who in the University community have special competence to address those aspects. Review commentary is solicited by the Center from these members of the University community. The responses to both the special solicitations and general invitations lead, not infrequently, to additions to the list of EIS's to be reviewed, and to the scope of the reviews. A second round of review of a statement may be undertaken, especially if there are significant divergences among initial review comments. The final review sent to OEQC incorporates all opinions presented to the Center, reconciling divergences only to the extent that reconciliation is agreeable to the participants.

The scope of the Center's reviews, and more particularly the number of reviews undertaken have of course been limited by the limitations in the number of available competent personnel and in other resources of the University community, more seriously by the limitations of time that the members of this community can make available to the review process, and most seriously by the limitations of time that the members of the internal staff can make available to the coordinating parts of this process. Trial attempts to transfer part of the coordinating responsibilities to external members of the Center for specific reviews failed because of the lack of the Center's control of the time of these volunteer participants.

The Center has not been involved, and indeed deliberately avoids involvement, in the preparation of EIS's, except as it is available to preparers to advise on general requirements and sources of information. It restricts participation in the review of any statement to members of the University community who in have not been involved in the preparation of that statement. It should be noted that the University (through the Center) is not the only reviewing agency--reviews are sought by OEQC from all concerned agencies. The OEQC has had the responsibility for the ultimate coordination of all reviews.

In addition to involvement with the reviews of EIS's the Center has also been involved in investigation of the purposes and functions of EIS systems,

has assisted the OEQC in drafting legislation to enlarge the State system, has reviewed such legislation for legislative committees, and has reviewed rules and regulations initially and informally proposed by the new Environmental Quality Commission (EQC) for implementation of the new State system called for by Act 246 of the 1974 legislature.

#### Potential role in consultation process

When assessment indicates that an EIS will be required for a proposed action, the regulations proposed by EQC require that the EIS development involve wide consultation. The responsibility for the EIS development rests formally on the proposer of the action, an applicant or proposing agency. In actuality, the proposer is very apt to employ consultants for the development. In Sec. 1.41 the regulations call, however, for additional wider consultation as follows:

In the preparation of an EIS, proposing agencies and applicants shall assure that all appropriate agencies, interested citizen groups, concerned individuals and others having legal jurisdiction, as can be reasonably ascertained, are consulted. It is inconceivable that an EIS could disclose environmental effects and alternatives without the preparer having consulted persons with expertise or jurisdiction.

To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS at the time the EIS is filed with the Commission, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.

If the general consultation process were to relate to an already nearly final draft of an EIS, and if it were conducted through the OEQC, as EIS reviews have been conducted in the past, or through the new EQC, or even through the other public agencies that have approval powers, the process could materially ease and shorten the review process, as was undoubtedly intended by the EQC. It is, however, left to the action proposers, including private applicants to carry out the consultation process; and the document serving as the basis for consultation is required, in Sec. 1.41a, to contain no more information than that required for the assessment whether or not an EIS was required.

It is quite doubtful that the Center should engage in the review of a consultation document under these provisions, particularly one generated by a private applicant, on the grounds that such a review would constitute a free consultation service competitive with the service of professional consultants. Devotion of substantial Center attention to documents submitted in the consultation period would be unwise in any case, unless and until these documents were well rounded-out drafts of EIS's. Advice by the Center on a document providing no more information than is involved in assessment should be limited to oral advice by the Center staff of the general nature of environmental effects that might result from the action and on sources of pertinent information.

As now provided by the regulation, therefore, the consultation phase does not appear to be one in which the Center should participate except perhaps at the request of a proposing government agency, and then only with respect to a nearly complete EIS.



### Potential role in formal review process

As already indicated, the major role of the Center has been in the formal process of EIS reviews. A limitation to the continuance of this role in the new EIS system must be pointed out. With its present capabilities the Center cannot undertake to review every EIS. Because considerably more EIS's will be processed in the future than in the past, the fraction reviewed by the Center in the future will be smaller even though the number reviewed by the Center remains the same.

### Potential role in recommendation process

The EQC should feel free to request Center advice concerning EIS's that are referred to it by proposers or approving agencies for recommendations as to acceptability as provided in Sec. 1.72 of the proposed regulations. The EQC should recognize that the capabilities of the Center to provide such advice will be severely restricted by the 10-day limit proposed in Sec. 1.72 (b) to apply to the process of recommendation regarding an EIS on a private action. If the Center had previously reviewed the EIS concerning which EQC's recommendation was sought, its advice could be significant; otherwise significant assistance will be very difficult. The 30-day period allowed by Sec. 1.72 (a) for EIS's on agency-proposed actions would not seriously limit the significance of the Center's participation in the recommendation process involving such EIS's, whether or not the Center had previously reviewed the EIS.

The question of prejudice that might arise from the Center's participation in both the review and recommendation processes regarding an EIS does not seem a serious one for the following reasons:

a) The Center's involvement in the recommendation process, and the extent of that involvement, would be at the discretion of the EQC.

b) The Center has rarely expressed and presumably will rarely express a direct opinion as to the acceptability of a statement. Its reviews are confined generally to specific points which the Center's reviewers consider erroneously or inadequately covered in the EIS. On occasion the reviews also contain commendations on the coverage overall or on specific points. Although the implications as to acceptability may in some cases be strong, the Center recognizes that acceptability is determined not only by the magnitude of the errors and inadequacies, but the magnitude of the research that would be required to rectify them, and by the importance of the environmental impacts themselves.

c) There seem to be no reasons why EQC should not request the Center's opinion on issues raised by other reviewers that the Center has not addressed in its own review.

d) When faced with differing opinions in the development of its own reviews, the Center is usually able to reconcile these differences through mediation and can generally find additional persons with pertinent competence not involved in the original differences to assist in the mediation. If requested by EQC, the Center, during the recommendation phase, could generally involve persons having necessary competence but no previous involvement.

### Potential role in appeal process

In the appeal process it may be assumed that representatives of the Center may be subpoenaed either by the plaintiff (the action proposer) or by the respondent (the approving agency). There is no recognition in either the rules or the regulations that the EQC might involve the Center as a "friend of the Court." Perhaps formal recognition is unnecessary, but the EQC should feel free to call upon the Center in the case of appeals, as in the case of recommendations.

### Funding Center role enlargements

We understand that the funds appropriated for the implementation of Act 246 included an allowance for the increase of the Center's capabilities for the appraising EIS's. The extent to which the Center's capabilities would have to be increased to cope with requests made of it by EQC for assistance in the preparation of recommendation or the consideration of appeals depends, of course on the number of requests. As previously indicated, the ability of the Center to assist in the recommendation and appeal processes respecting particular EIS's will also depend in part in the Center's previous engagement in the review of those EIS's.

Any enlargement of the Center's engagement in the review process consonant with the increase in the number of EIS's will depend upon additional support for the Center's review activities. It is not clear as yet, however, that the EQC considers itself responsible for the review process, beyond the formulation of pertinent rules and regulations. Whether the funds appropriated will actually be used to increase the Center's capabilities depends, therefore on the decision by EQC whether the funds are to be used for the support of the EIS system as a whole, or merely for the support of the EQC role in that process.

### Other significant substantive comments

The following comments, although they are brief relate to substantive changes that will or might be significant.

### Significant effect

The definition of "significant effect" in Reg. sec. 1.6(u) is taken directly from Act 246 and hence may not be within the powers of the Commission to change. It is actually a definition of what might be termed "overall effect." Significance is not assured by the summation of effects that may be real but without consequence. The judgment of significance is to be made under the criteria and through the procedures identified in 1.31. Contrary to the implications of the present wording of 1.6(u) commitments of more than one natural resource may be included in "significant effect."

If redefinition is possible, the definition should be revised more or less as follows:

"(u) Significant effect means the sum of those effects that . . . including irrevocable commitments of natural resources, curtailment . . . or adverse effects upon the economic or social welfare when such sum is judged significant by the criteria and procedures prescribed in subsection 1.31."

#### Conditions for EIS requirement

Reg. sec. 1.22(a) reflects Act 246 sec. 4(a) in mandating an EIS for an applicant-proposed action if it falls in any of four geographic categories or one administrative category, and if they also "will probably have significant environmental impacts." The same language is used in sec. 1.3(a) and 1.31(d). However, with respect to agency-proposed actions in Act 246 sec. 4(b) and with respect to applicant-proposed actions in Act 246 sec. 4(c), the criterion for requiring an EIS is that the action "may have a significant effect on the environment." To conform with these provisions of the Act "will probably have a significant environmental impact" should be changed to "may have a significant effect on the environment" in Reg. secs. 1.3(a) and (d).

#### Exemptions

Provision is made in Reg. sec. 1.33 for the exemption of certain classes of actions from EIS preparation. Although in general the identification of these classes of action is appropriate, the exemption in some is too broad.

Serious environmental impacts may result from constructing, reconstructing, or demolishing such structures as those built to control erosion, control drainage including flooding, control wave effects, or induce sedimentation as on a beach. Yet the proposed regulations would unwisely exempt from EIS preparation the construction of such structures if they are "small" in sec. 1.33 (a)(3), and the reconstruction and demolition of such structures whether large or small in secs. 1.33 (a)(2) and 1.33 (a)(9) respectively.

Sec. 1.33(b) renders the exemptions in sec. 1.33(a) inapplicable in two cases: *i*) successive actions whose cumulative impact may be significant; and *ii*) actions with normally insignificant impact carried out in a particularly sensitive environment. However, the environmental control structures that should be excepted from the exemptions of sec. 1.33(a)(2)(3), and (9), need not be built repeatedly to have significant impact; and they cannot be considered to have normally an insignificant impact, because they are built in sensitive environments deliberately to have an impact on those environments. To render inapplicable the exemptions from EIS preparation for the construction, demolition, or reconstruction of such structures as those discussed, sec. 1.33(b) should be amended by adding a third case of inapplicability of automatic exemption: ". . . or when an action consists of the construction, demolition, or reconstruction of a structure intended to affect the external environment."

### Adverse effects of alternatives and mitigation measures

The content requirements set forth for an EIS include identification in Reg. sec. 1.42(i) of "Mitigation measures proposed to minimize impact," and in 1.42(g) "alternatives to the proposed action." It would be well to recognize in the regulations that the discussions of neither mitigation measures nor alternatives can be considered adequate unless their detrimental impacts are recognized. In several EIS's in which noise is recognized as a significant impact, for example, the construction of noise barriers has been proposed as a mitigation measure without any recognition of the esthetic impacts of such barriers.

### Benefit-cost analyses

Reg. sec. 1.42(g) requires that alternatives to a proposed action be analyzed in sufficient detail "to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative." The requirement should not be restricted to analysis sufficient for this purpose but should extend to the actual comparison of overall benefits and costs (including the environmental ones), quantified to the greatest extent feasible.

### Mandate to conform to EIS

Acceptance of the EIS is explicitly stated in the regulations to be a condition precedent to the undertaking of any action for which an EIS is required (in sec. 1.14(b) for agency-proposed actions and sec. 1.23(b) for applicant-proposed actions). The EIS is explicitly required to contain a description of the project (in sec. 1.42(b)) and a description of any measures that will be undertaken to minimize deleterious impacts (in sec. 1.42(i)). The regulations nowhere explicitly state that the action must proceed as described in the EIS. Sec. 2.00 provides that a supplemental statement may be required if there is a major change in the size, scope, location, timing, or other characteristics of an action, but this is a negative way of coping with the problem. The regulations should contain a section explicitly requiring that actions proceed as described in the EIS's pertaining respectively to them.

### Requirement of supplemental EIS's

The provisions in Regs. secs. 2.00, 2.10, and 2.11 for requiring supplemental EIS's under certain circumstances have already been commended. Among the circumstances appropriately justifying the requirement of a supplemental EIS are ability to determine the environmental impacts of proposed action when the plans for the action have been developed in greater detail than pertained at the time when the original EIS was developed. It would be wise to include that circumstance specifically. It would be consistent to provide for the appeal to EQC, and to the courts if necessary, of a decision to require or not to require a supplemental EIS in the same manner as decisions to require or not require an EIS or decisions on the acceptance or non-acceptance of an EIS are provided in 1.80 and 1.81.



## Judicial proceedings

Sec. 6(c) of Act 246 and Reg. sec. 1.81(c) restrict the standing to file suit concerning the acceptability of an EIS to affected agencies and to persons who have filed written comments on the EIS in the review process and who, in addition, will be "aggrieved." Neither the act nor the regulation define the meaning of aggrieved. To avoid a narrow interpretation that would unduly restrict the standing of parties having considerable knowledge about the environmental, economic, and social consequences of a proposed project, the regulations should indicate that environmental and other concerned groups are not foreclosed from standing if they can demonstrate to the satisfaction of the court the seriousness of their concerns.

## Minor substantive and editorial comments

### Identification of approving agency

Because approval of an action may require approvals from more than one agency, the Regulations appropriately describe, in sec. 1.24, means by which one of the agencies will be identified as having the EIS approval power. Among the four factors to be specifically considered in the identification, "1.24(b) The agency that can most adequately fulfill the requirements of Chapt. 343 . . ." really sums up all of the others, and should be placed first or last.

### Maps

Maps are required as part of the documentation for assessment in Reg. sec. 1.31(c)(5), in pre-EIS consultation in 1.41(a)(4) and in the EIS itself in 1.42(b)(4). The requirement is an appropriate one, because geographic location is an important consideration in all of the actions to which EIS's apply, because such other spacial characteristics as size and shape are important in most, and because maps are generally most convenient for displaying spacial relations and characteristics. The last two sections cited indicate a preference for USGS topographic maps as detailed maps. This preference will be appropriate, generally, but not always. It would seem better to change the wording in both sections to read ". . . including regional and detailed maps (use of USGS topographic maps is encouraged)".

### Exemptions

In reg. sec. 1.33(a)(3) it is not clear whether "single-family residences not in conjunction with . . . two or more such units" or "multi-unit structures . . . not in conjunction with two or more such structures," etc. means in conjunction with two or more structures in addition to the one in question or including the one in question. This should be clarified.

Reg. sec. 1.71(c) and 1.71(d) deal with specific EIS content requirements that are already included in 1.71(b). 1.71(e) deals with specific procedural requirements that are already included in 1.71(a).

Reg. sec. 1.71 should be reduceable to a single sentence: "a statement will be deemed to be acceptable document only if all applicable procedural requirements in these regulations and all content requirements described in section 1.42 have been satisfied."

#### Unavoidable, irreversible, and irretrievable impacts

Among the contents of an EIS, Reg. sec. 1.42(f) requires identification of "Any probable adverse environmental effects which cannot be avoided," and 1.42(j) requires identification of "Any irreversible and irretrievable commitments of resources." Both are components of the impacts considered in 1.42(e), "The probable impact of the proposed action on the environment." The purposes of an EIS clearly indicate the special need to identify, among the impacts, those that are unavoidable and adverse. Among the latter, those which are irreversible and irretrievable are the most serious. 1.42(e), 1.42(f) and 1.42(i) thus represent merely successively increased levels of concern with increasingly restricted categories of impact. It would be well to reorder the sections so that 1.42(i) follows 1.42(f), and combination of these two subsections should be considered.

#### Acceptance

The order of the second and third paragraphs of Reg. sec. 1.72 should logically be reversed.

#### Editorial changes

In the attached excerpts from the proposed rules and regulations a number of suggested changes are indicated in manuscript. The number inserted in the margin opposite each suggested change refers to the reason for the suggestion in the table below:

- 1) Consistency
- 2) Hyphenation of compound adjectives formed by two or more nouns. (This suggestion is more than pro-forma. Some of the sentences in which the change is suggested do not make sense without the hyphen.)
- 3) Punctuation
- 4) Agreement as to number
- 5) Acronym plural
- 6) Parallelism of construction and distinction between "that" (prescriptive), and "which" (non-prescriptive)
- 7) Distinction between indefinite article (no antecedent) and definite article (no antecedent)
- 8) Typography



## Rules

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- 7) 1.10 c. Certification. All documents must be signed in indelible ink by the party signing the same or his duly authorized agent or attorney. The signature of the person signing ~~the~~ document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief, every statement contained therein is true and no such statement is misleading; and that it is not interposed for delay.

- 4) 1.13 a. By Whom Served. The Commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the party ~~filing~~ <sup>ies</sup> them.

## Regulations

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1.6

- 4) (l) Environment means man's surrounding<sup>s</sup>, inclusive of all of the physical economic and social conditions which exist within the area which will be affected by a proposed action including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic

- 6) (n) Environmental Impact Statement <sup>that is</sup> or statement or EIS means an informational document prepared in compliance with Chapter 343, Hawaii Revised Statutes, applicable rules, and these regulations, and which discloses: the environmental effects of a proposed action, the effects of a proposed action on the economic and social welfare of the community and State, the

- 4) (s) Person includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than ~~agencies~~ <sup>an</sup> ~~ies~~.

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- 2) 1.10 General. In determining which agency<sup>^</sup> proposed actions are subject to Chapter 343, Hawaii Revised Statutes, agencies are to assess at the earliest practicable time the significance of any environmental impacts in its action, with a view to: the overall, cumulative impact; related actions in the region; and further

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- 8) 1.22 (# 2) plan for the Kalia, Waikiki, and Diamond Head areas, as shown on the map designated as portion of 1967 City and County of Honolulu General Plan Development Plan Waikiki - Diamond Head (Section A). The fifth category relates to actions for which a County general plan amendment is proposed or required under County ordinance and which would result in a designation

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- 2) 1.30 (a) Subsequent to the conception of an agency proposed action, but prior to the adoption of a plan of study, the agency should: (1) identify potential impacts; (2) evaluate the potential significance of each impact; (3) provide for detailed study of major impacts; and (4) determine the need for a statement. In the assess-

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- 8) 1.31 (# 2) A "significant effect" may vary with individual setting and circumstances of particular actions. Generally, however, any action which may have a major effect on the quality of the environment, or affect the economic or social welfare of an area, or would possibly be contrary to the State's environmental policies or

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- 5) 1.32 (a) Previous determinations and previously accepted EISs may be incorporated whenever the information contained therein is pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.

- 5) (b) Agencies shall not, without considerable pre-examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought should be thoroughly reviewed prior to the use of previous determinations and previously accepted EIS. Further,

- 3) 1.33 (a) Chapter 343, Hawaii Revised Statutes, has directed that a list of classes of actions be drawn up which, because they will probably have minimal or no significant effect on the environment, shall generally be

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- 8) 1.33(a) (5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;

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- 4) 1.41 Consultation Prior to Filing EIS. In the preparation of an EIS, proposing agencies and applicants shall assure that all appropriate agencies, interested citizen groups, concerned individuals and others having legal jurisdiction, as can be reasonably ascertained, are consulted. It is inconceivable that an EIS could

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- 8) 1.42 (c) Description of 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 should be placed on environmental resources that are rare or unique to the region and the project site (including natural or man made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and

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- 3) 1.71 (a) procedures for assessment, consultation process, a review responsive to comments, and the preparation and submission of the statement, have all been completed satisfactorily as specified herein;

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- 8) 2.10<sup>01</sup> Supplemental Statement. Proposing agencies and/or applicants shall prepare for public review supplemental statements whenever the proposed action for which a statement was accepted has been modified to the extent that new or different environmental impacts are anti-

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- 8) 2.11<sup>02</sup> The accepting authority shall be responsible for determining whether a supplemental statement is required.