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HB 119, HB 125, HB 368, and HB 586 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement to
House Committee on Environmental Protection
Public Hearing
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by
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INTRODUCTION

HB 119, HB 125, HB 368, and HB 586 propose amendments to the State Environmental Impact Statement (EIS) Act, Chapter 343, Hawaii Revised Statutes. This statement on these bills has been prepared on the basis of the extensive experience of the Environmental Center of the University with the environmental impact statement system, much of which has been reflected in reviews of the system and in statements on previously proposed changes to it.

The statement itself addresses merely the major effects of the amendments that are proposed, and some potential improvements to the EIS system that would not be provided by any of the bills. Appended to it, however, are detailed analyses of three of the bills, and a more extended discussion of the additional potential improvements.

Our statement is being submitted for review to the Center's Legislative subcommittee. Any additional pertinent commentary emerging from the review will be submitted to the House Committee on Environmental Protection later. The statement does not reflect an institutional position of the University.

HB 119

This bill has been introduced in short form only. Hence, comment cannot be made on the substantive provisions that may later be incorporated in it.

HB 125

This bill is essentially identical to HB 2012, HD 1 (1976) which the Environmental Center reviewed last year (RL 0184). More substantial review is now possible. We summarize here the most important effects that would result from the amendments of the EIS Act that are proposed in the bill, and provide detailed comments in Appendix A.

Principal Improvements

In general, the amendments proposed are appropriate. In particular, improvements in the EIS system would result from the amendments to the following subsections of the Act:

343-1(3)	343-4(f)
343-4 (introduction)	343-4(g)
343-4(a) (3) [old 343 b (B)]	343-5(3)
343-4(a) (6) [old 343 b (E)]	343-6(c)

Some of the provisions merit special comment, especially the few that may weaken the EIS system in some particulars.

Address to economics and social effects

The proposed amendment of the definition of an EIS [343-1(8)] would delete the requirement that an EIS address economic and social effects, yet the proposed amendment of the definition of "significant effect" in 343-1(10) would add economic and social effects to those included. The consequence would be that a significant economic or social effect would result in requiring an EIS for an action, but the EIS would not address the economic or social effect. We suggest that the language regarding economic and social effects be retained in the definition of an EIS.

Significant effects as criteria for EIS requirement

The proposed amendment of the introduction to subsection 343-4(a) is one we have noted as representing a particular improvement. It would eliminate a present incompatibility between the circumstances under which EIS's are required in this subsection [343-4(a)] and the provisions for their handling in 343-4(c). Further consistency suggests the desirability of a revision of the amendment to substitute the clause "which may have significant environmental effects" for the clause "which will probably have significant environmental effects." The wording "may have a significant effect on the environment" is used in subsection 343-4(b) and in subsection 343-4(c). The effect of the further revision would be to require an EIS that would determine the probability of a significant effect, if such an effect were only suspected initially.

Additions to classes of acting requiring EIS's

Two notable additions would be made by the proposed amendments to the classes of action requiring EIS's: actions within the Special Management areas established under the Shoreline Protection Act (HRS Chapter 205-A, II) (by amendment in subsection 343-4(a)(3)); and actions within other county historic, cultural, and scenic districts, besides the Diamond Head HCS district (by amendment in subsection 343-4(a)(5)). In adding the latter, however, the

proposed amendment of subsection 343-4(a)(5) would delete the present requirement for EIS's for actions within the Waikiki portion of the development plan for the Kalia, Waikiki, and Diamond Head area, because Waikiki is not within an HCS district. This deletion may not have been intended.

Acceptance of agency EIS's

The proposed amendment of the provision for acceptance of EIS's in 343-4(b)(1) could be construed as allowing a state agency to accept its own EIS on an action it proposes. This was probably not intended, and in any case would be unwise.

HB 368

This bill would require EIS's for all actions proposed within a conservation district, regardless of whether they would have significant environmental impacts or not. Since the purpose of an EIS is to identify, analyze, and disclose environmental impacts, there would seem to be no purpose to requiring an EIS for an action unless ensuing environmental impacts might be significant.

More extensive comments on this bill are presented in Appendix B.

HB 586

This bill would replace all of the prescriptions in the present EIS Act as to the requirement for private actions. The replacement would be a provision that the counties may determine for which kinds of private actions EIS's will be required. This would allow the counties to determine whether EIS's will be required even in the case of actions which require State approvals. Unless and until the counties adopt the same or more extensive requirements than those now in the Act, neither State nor County agencies would have available for their approval decisions the kinds of environmental information that is provided in EIS's. The bill sets no time limits to County responses. At least in its present form, therefore, its passage would set back the consideration of environmental impacts in the decision-making processes.

Our more extensive comments on this bill are presented in Appendix C.

FURTHER IMPROVEMENTS

A number of improvements of the EIS Act that have previously been suggested by the Environmental Center would not be accomplished by HB 125 or any of the other bills considered at this hearing. These will be discussed very briefly here, and at greater length in Appendix D.

Criteria for requiring EIS's

1. Two versions of the impact-probability criterion for determining whether an EIS is required are now provided in the Act. One is that significant environmental effects will *probably* ensue from an action, the other that they *may* ensue from the action. Since the probability of environmental impacts cannot be determined in advance of analysis, and the analysis will not be made if there is no EIS or at least a preliminary assessment, the criterion that should be used systematically is that there *may* be significant environmental impacts. Amendment of the Act to change the wording "will probably have significant environmental effects" to "may have significant environmental effects" seems desirable.

2. Four geographic criteria are presented in the Act for requiring EIS's on private actions.

A fifth seems a logical addition. A Special Management Area (SMA) has been established in each county under the Shoreline Protection Act. The reason for this establishment was to avoid undue environmental impacts. The requirement of an EIS for any action proposed in an SMA would assure that the information on environmental effects, necessary for sound decisions as to SMA permits, would be available. Amendment of the Act to call for EIS's on actions within the SMA seems desirable.

Exemptions

1. The EQC regulations now provide for the exemption from EIS requirements of actions to maintain natural features. Beach maintenance projects which would then be exempt, for example, commonly have unforeseen disastrous effects which could be avoided if disclosed in advance in EIS preparation. Amendment of the Act would not be necessary to delete the provision for the exemption of maintenance of topographic features. A legislative resolution calling for EQC's deletion of the objectionable provisions may, however, be in order.

Public Involvement

The time limits set to the review and acceptance processes are unnecessarily stringent. The Act could usefully be amended to prescribe separately a time limit for review and the time limit for acceptance for EIS's on private actions, and the EQC could usefully delete the time limit it has set to the review and acceptance processes for agency actions that is not required by the Act.

Coordination

The Act could usefully be amended with respect to EIS's on county agency actions to provide that coordinating powers may be delegated to a county agency.

Appeals

1. The Act provides that appeals may be made to the EQC in the case of certain decisions or failures to make decisions. Amendment seems appropriate to provide certain other appeals to EQC that would be equally appropriate.

2. In its provision regarding appeals to the courts, the Act is unclear whether these are intended merely to limit the times during which judicial proceedings may be initiated, or to limit the bases for a judicial appeal. The Act is silent on judicial appeals of the most flagrant possible kind of violation, the undertaking of an action for which an EIS has been required but for which no EIS has been accepted. An amendment is thoroughly justified to recognize the appropriateness of such an appeal and set a time limit for the initiation of proceedings.

Extension to Planning

The processes of environmental analyses, conditional prediction, and disclosure are surely of importance to general planning as well as to individual projects. The kind of document now called an EIS may not be particularly suitable for general planning. Consideration should be given to extending the principles, but not necessarily the requirement for EIS's, to State and County general planning.

Objectives

Finally, an expression of the objectives of the EIS Act could usefully be incorporated in the Act.

Appendix A

COMMENTS ON HB 125

Proposed amendments to subsections of 343-1. Definitions

"(1) Acceptance" (p. 1, ls. 6-13):

This appears to be primarily a housekeeping amendment.

"(3) Agency" (p. 1, 1.1 to p. 2, 1.5):

By eliminating the restrictions to units of the executive branch of the government, the amendment would include county councils among bodies charged with environmental assessment under 341-4(c). With respect to certain actions, this amendment would eliminate inconsistencies in the application of the EIS law between counties in which an executive agency has the final approval power, and those in which the final approval must be given by the County Council. However, the proposed new definition of agency would include the courts and other judiciary agencies, which was probably not intended.

[New] "(5) Approval" and [New] "7. Discretionary".

The continuation of these new subsections would limit the approvals that determine environmental assessment responsibility to those that are of a discretionary character, as distinct from those of a ministerial character. The definition of ministerial, included in the definition of "discretionary" (p. 2, 1. 18), would be greatly improved by the addition of the phrase "without personal judgment." The grammatical construction in the proposed subsection defining "discretionary" needs correction.

These amendments have been stimulated by the issue of the possible applicability of EIS system to a private project meeting all other criteria for requiring an EIS, but requiring, in the way of governmental approval, only a building permit.

Certainly the environmental assessment of a project subject solely to a certification that certain definitive and objective standards have been met in its design would be of little benefit. Even if the assessments were to indicate some very detrimental environmental impact, not covered by any of the applicable standards, the governmental approval could not be withheld, and the only possible benefit of the assessment would be its inducement of the applicant himself not to undertake the project because of its detrimental impact.

Hence, even if amendments proposed are appropriate, the extent to which they should be considered to exempt from environmental assessment requirements those private projects that require only building permits is questionable. The issuance of a building permit by a County Building Department signifies that the proposed construction will meet certain standards such as structural, electrical, and plumbing standards whose enforcement is the responsibility of the Building Department. It also signifies that the proposed construction will meet health standards imposed by the State Department of Health, and may be provided, as needed by services such as water supply, sewerage drainage, and fire protection, that are provided by or subject to the supervision of other county agencies.

If all of the many applicable standards in the several applicable codes are clearly met in the construction plans for a project, the issuance of the building permit is clearly non-discretionary, and there would be little point to requiring an environmental assessment. However, room for judgment is provided even in some of the codes. For example, the Honolulu Building Code provides for variances from the Code's strict interpretation, and the Electrical Code provides for appeals from interpretations of the Building Superintendent. In practice, judgment is used even more extensively. Reviews of environmental impact statements (though not statements required on the basis of a building permit) have indicated approvals, by one agency or another, of plans that are not strictly in conformity with standards and, specifically, not in conformity with environmental standards.

It would be very difficult to prescribe in advance which building permit issuances will involve significant judgments with regard to environmental standards; and it would be absurd to subject all projects that need building permits, and that meet other criteria for the requirement, to the environmental assessment requirement. Hence, perhaps the passage of the proposed amendments is appropriate. However, a Building Department should feel free to make an environmental assessment of a project requiring a building permit if significant environmental judgment is involved, and if appropriate to issue an EIS Preparation Notice; and the possibility of an appeal to the courts to require the assessment in such a case should be recognized.

"(8) [old 6]" (p. 2, l. 19--p. 3, l.6) Environmental Statement":

This amendment appears intended as a housekeeping measure, certain topics being transferred to new subsection 10. However, it should be noted that the only requirements as to the content of an EIS in the EIS law are in this subsection, the content prescriptions being left otherwise to the EQC under 343-5(1). The transfer would remove, from the law, the requirement for discussion of certain topics whose importance is the reason for requiring EIS's under 343-4 and 343-1(8) or new 343-1(10). These topics are: i) "the economic and social effects of an action," and ii) "the effects of economic activities arising out of the action."

Public concern with the physical and non-biological effects of an action relate mainly to the human implications of these effects.

These implications are social and economic (or social including economic). This has been made clear by federal court decisions concerning the EIS requirements under the National Environmental Policy Act, which are phrased in the act itself without reference to social and economic impacts. To strip from EIS's the discussion of the social and economic implications of environmental impacts would destroy their principal utility.

On the other hand, our capabilities to predict those social impacts of an action that do not ensue primarily from changes in the natural environment are much more limited than our capabilities to predict natural environmental impacts.

From a single action, a number of alternative economic activities may ensue. It may often be very difficult to foresee the range of such activities, and hence even more difficult to foresee the environmental impacts of those activities. However, these indirect impacts may be among most important secondary effects of the original action, and it would seriously reduce the effectiveness of the EIS system if no discussion of such indirect impacts is required in the EIS's.

It should be noted that other amendments of the EIS law that are being considered or have been considered would extend, not limit, the requirement for discussion of social, economic, and indirect impacts. There can be no question that more consideration of such impacts should be given to the more fundamental planning decisions of the State and counties, as would be provided in some proposals. The only question is whether an EIS document, designed originally to pertain to a discrete project, is the best means of providing for such consideration.

The proposed amendment of this subsection appears unwise, at least in its present form, and should be thoroughly reconsidered.

[New] (10) [old (8)] (p. 3, l. 18--p. 4, l. 4):

Significant environmental effect. The amendment represents an improvement. However, it should be noted that the term is used, for example, in Sec. 343-4, in the plural, and there can be no more than one sum of all environmental effects. It should also be noted that the definition does not really reflect the limitation to what is significant. The grammar could also be improved.

Proposed amendments to subsections of 343-4

(a) (Introduction) (p. 7, ls. 7-9)

The proposed amendment of the introduction and reorganization of subsection (a) is one we have noted as representing a particular improvement. It would eliminate a present incompatibility between the circumstances under which EIS's are required in subsection 343-4 (a) and the provisions for their handling in 343-4(c).

Further consistency suggests the desirability of a revision of the amendment to substitute the clause "which may have significant environmental effects" for the clause "which will probably have significant environmental effects." The wording "may have a significant effect on the environment" is used in subsection 343-4(b) and in subsection 343-4 (c). The effect of the proposed revision would be to require an EIS to determine the probability of significant effects even if such effects were only suspected initially. An attractive refinement, which has been suggested by the EQC, would incorporate in the EIS law the two-stage procedure by which the degree of likelihood of significant impacts is successively appraised: first, through an "assessment"; and then, if necessary, in a formal EIS. Unfortunately, the EQC suggestion appears not to have been transmitted to the Legislature.

(a) (3) [old (2) (B)] (p. 5, ls. 4-9):

The amendment of this subsection would extend EIS requirements to actions occurring within the General Management Areas, established by each county under the Shoreline Protection Act (HRS Chapt. 205-H, Part II). Considering the environmental importance assigned to these areas, the extension seems entirely appropriate.

(a) (5) [old (2) (D)] (p. 5, l. 17--p. 6, l. 5):

The amendment of this subsection would extend EIS requirements to actions within other county historic, cultural and scenic districts, besides the Diamond Head HCS district. In providing the extension, however, the proposed amendment would delete the present requirement for EIS's for actions within the Waikiki portion of the development plan for the Kalia, Waikiki and Diamond Head area, because Waikiki is not within an HCS district. This deletion may not have been intended.

(a) (6) [old (2) (E)] (p. 6, ls. 6-20):

This amendment would remedy a defect of the present EIS law whereby an action requiring an amendment of a county general plan would require an EIS only if the amendment were proposed by a private party, but not if the same amendment were proposed by an officer of the county at the request of the private party.

(b) The amendments proposed in this subsection would have three effects.

- i) The housekeeping effect of certain of the amendments (p. 6, ls. 23-24; and p. 8, l. 9) would be useful.
- ii) The effect of the amendment of the acceptance power in the case of state actions (p. 8, ls. 1-3) is not clear. It might be to give state agencies the power to accept their own EIS's, which would be most undesirable. It might be to give the governor the acceptance power over EIS's that pertain, not only to actions that will use State lands and funds (category (1) of sec. 343-4(a) as revised), but those that fall within categories (2) to (6) of subsection 343-4(a) as revised. If the latter is intended, the wording to be added should be revised to: or whenever a state agency proposes an action within the categories (2) to (6) in subsection (a)."
- iii) The effect of the amendment of the acceptance power in the case of county actions (p. 8, l. 5) would appear to make acceptance of an EIS by both the governor and the mayor necessary if an action required the use of both state and county lands or funds).

An action requiring a combination of state lands or funds and county lands or funds cannot proceed without the approval of both the state and the county. The implication, then, may be that the EIS on such a joint action must be acceptable to both the governor and the mayor. However, the EIS should be as nearly an objective statement as possible, and if the governor vetoes a project approved by the county or the mayor vetoes a project approved by the state, the veto should be based squarely on the overall merits of the project. Neither the mayor nor the governor should be tempted to conceal his value judgment as to these overall merits through non-acceptance of the EIS.

It would seem proper to limit the power of acceptance of the EIS's on such an action to the governor alone, as in the present law.

(c) Some of the amendments of this subsection are proposed for consistency with other amendment (or as housekeeping measures). The reference to the exemption lists of 343-5, for example, is a useful addition (p. 8, ls. 19-20).

The recognition of the need for supplemental EIS's for some actions (p. 9, ls. 7-14) is a more substantial improvement, incorporating in the law provisions already made in the EQC regulations. However, it should not be necessary to require a supplemental EIS for each phase of the approval process. The initial EIS should, so far as is possible address the concerns that will be faced in the subsequent approval phases, and a supplemental EIS should be required only if there are significant changes in the action or set of actions proposed, if the circumstances under which these actions would be undertaken change, or if new evidence as to environmental impacts comes to light.

(f) The amendment of this subsection (p. 11, l. 12) substituting "acceptance" for "approval" of an EIS represents clarification consistent with the terminology used elsewhere in the Act.

The deletion of the provision for submission of an EIS that is required under both the State Act and NEPA to the EQC for public review (p. 11, ls. 7-11) seems of no importance because, if the EIS is required under this Act, it would be processed in accordance with the requirements of the Act.

The deletion of the word "only" in p. 11, l. 17 introduces the same overlap of authority between the governor and the mayor that has been commented on in connection with subsection (b).

Proposed amendments to Sec. 343-5. Rules and Regulations.

(3) (p. 12, ls. 15-17): The substitution of "acceptance" for "approval" of an EIS is consistent with usage elsewhere in the Act, and an improvement [old] (7). (p. 12, ls. 6-12). Old subsec. 7 is redundant to subsec. (6) and should be deleted as proposed.

Proposed amendments to Sec. 343-6. Limitations of actions.

(a) and (b) (p. 13, l. 21--p. 14, l. 13):

The amendments appear to be appropriate housekeeping ones.

(c) The amendment (p. 14, ls. 18-23) to permit the EQC to be a party in a judicial action concerning the acceptability of an EIS is an appropriate one.

The amendment (p. 15, l. 1) deleting the restriction that a plaintiff may contest an issue, only if that plaintiff has previously discussed that specific issue in the review process, is clearly a wise one. A person may have no knowledge of an impact that may of direct concern to him until after the review process is completed.

Appendix B

COMMENT ON HB 368

This bill would delete, from the present prescription for EIS's on actions using Conservation District lands, the limitation that an EIS is required only if the action will have significant environmental effects. The rationale presented is that such broad exemption, by class, of actions in the conservation district is possible under the present Act as to negate the effectiveness of the Act.

In reviewing types of action proposed by agencies for exemption under the exempt classes provided in the EQC regulations, the Environmental Center has found many that are so broadly defined that they would include actions that will have significant detrimental environmental impacts. Most of the exempt types have, however, been more satisfactorily redefined before approval by the EQC. To reduce the problem of improper breadth of definition, the Center has recommended applying the assessment process that has been prescribed by EQC for individual actions to proposals for exemption.

The EIS system is intended to identify, analyze, and disclose environmental impacts. There is no point to applying the system to actions that will not have significant impacts on the environment. The extension of EIS requirements, or at least assessment requirements, to actions that *"may"* have significant impacts, instead of those to which such impacts seem *"probable"* even before an EIS is proposed, would be appropriate. However, this extension would be appropriate for actions undertaken anywhere, not merely those in the conservation district.

The amendment proposed does not seem to be in accord with the objectives of the EIS Act.

APPENDIX C

COMMENTS ON HB 586

This bill would delete all of the prescriptions in the present EIS Act as to the kinds of private actions for which EIS's are required, and replace them by a provision that each county may determine what actions in that county may require EIS's, so long as the actions will probably have significant environmental effects.

It should be noted that this would permit the counties to determine which private actions proposed in certain areas will require EIS's, even if it is the need for State approval of the projects that now result in the EIS requirement. No EIS would be required for a proposed private action within the conservation district, unless a county required it, even though a Department of Land and Natural Resources permit is required for such use, and the Department relies on the information in the EIS as to the environmental effects in determining the appropriateness of the action. This would include an action proposed for an area seaward of the shoreline.

The proposed deletion would be most serious in the case of actions proposed in areas seaward of the shoreline. These are within the conservation district, but the counties could not require EIS's in such areas because they are not within county jurisdictions.

With the deletion, no EIS would be required for private uses of a historic site listed either in the National Register or the State Register, unless a county required it.

The proposed amendment would, thus seriously restrict the access of State, as well as county agencies, to information on the environmental effects of actions subject to their approvals unless the counties chose to require the provision of such information through EIS's, and the requirement could not make the requirement for actions seaward of the shoreline.

The City and County of Honolulu has, it should be noted, mandated the preparation and review of EIS's for projects proposed in the Special Management Area established under the interim Shoreline Protection Act, even though these EIS's are not required under the State EIS law. It would, thus, be possible for the counties not only to adopt the same requirements as to EIS's as in the present State law, but to extend them even without special legislation provision. There is no assurance that the counties will do so, however, and there will inevitably be a delay before they could adopt the ordinances required. In the meantime, except as provided within the Special Management Area of Oahu, decisions with respect to private actions would have to be made without adequate information as to their environmental implications, as was the case prior to the passage of the EIS law.

It would be possible, of course, to extend explicitly to the counties the power to require EIS's more extensively than is provided in the present State law without weakening the present State law.

Appendix D

POTENTIAL FURTHER IMPROVEMENTS

In October, 1975, the Environmental Center prepared, for the consideration of the Senate Committee on Ecology, Environment and Recreation, a general review of "The State Environmental Impact Statement Act and the Regulations of the Environmental Quality Commission" (RG:0023, 21 October 1975). This review was subsequently presented also to the House Committee on Environmental Protection as an appendix to a statement on those bills relating to the Environmental Impact Statement system (RL: 0161, 17 February 1976). Several of the potential improvements of the system that were pointed out in that review would be accomplished by the passage of HB 125, but some would not be.

The outline of the general review is indicated in what follows, to indicate the context in which the potential improvements were discussed. Improvements that would be accomplished by HB 125 are indicated by brief notes following the topic titles. Comments on improvements that would not be accommodated by HB 125 are quoted in full, in some cases with additional explanatory notes.

Introduction

Objectives

The successes and failures of the State EIS system should be judged in the light of its objectives. With respect to the specific goal of establishing a system for environmental review, the EIS Act has clearly been successful. With respect to its broader aims, improvement of the system seems possible.

No statement of objectives is included in Act 246 or the bill for this Act [HB 2067-74, HD 1, SD 1, CD 1]. However, the Conference Committee reporting on this bill identified its purpose as the establishment of "a system of environmental review at the State and County levels which will ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations" [Conf. Comm. Rept. 27, 1974], and this purpose is reflected in the EQC Regulations [EQCR 1:2].

Among the objectives of the system, it seems useful to distinguish goals, which the system is expected actually to achieve, from broader aims, whose furtherance is intended but which cannot be achieved by the system alone. The purpose of establishing a system of environmental review is a goal achieved by the Act. Ensuring that environmental concerns are given appropriate consideration is a broader aim. What is appropriate in this context is surely suggested by the State Environmental Policy Act which, like the Act 246, resulted from recommendations of a Temporary Commission on Environmental Planning and was passed at the same session of the Legislature. This Act established conservation of resources and enhancement of the quality of life as aims to be furthered by all programs and authorities of the State [HRS 344-3]. Conservation is appropriately regarded as the combination of preservation and wise use. Hence in the broadest sense, the aim of Act 246 would seem to be to further environmental conservation in the context of overall and long-term human welfare.

The recommendations and suggestions presented in this statement relate to means by which the effectiveness of the system might be improved in relation to the broader aims.

A first suggestion is:

That the Legislature consider amending Act 246 to include not only the goal expressed in the Conference Committee report and the EQC regulations, but the broader aim of furthering environmental conservation in the context of overall and long-term human welfare.

Criteria for requiring EIS's

Provisions of Act

Clearly an important distinction to be sought is that between actions for which EIS's are required and those for which they are not. Quite appropriately, the Act establishes principles by which the distinction is to be made, substantively and procedurally, and leaves it to the EQC through its Regulations to fill in the details.

Two kinds of judgments are prescribed in the Act for making the distinction. One relates to the probability that actions will have significant environmental effects. The other relates to characteristics of the actions. The characteristics on which the EIS requirement is based are different for governmental actions and private actions. Government actions are subject to the requirement only if they will use state or county lands or funds [HRS 343-4(a)(1)]. Private actions are subject to the requirement only if they fall within one or more of five classes, defined by geographic or administrative criteria. With some simplification these classes are constituted by actions that will [by HRS 343-4(a)(2)]:

- A. Use conservation lands
- B. Use the shoreline area
- C. Use a historic site
- D. Use lands in the Waikiki-Diamond Head area
- E. Require amendment of a county general plan

The following subsections of this statement relate to a discrepancy between the scope of the EIS requirement in the Act and the scope of the means prescribed to implement the requirement, a loophole in the impact probability criterion, an administrative limitation to the EIS requirement for private action, and a limitation to one of the geographic classes of private actions subject to the requirement.

[Consideration should be given to adding to the geographic categories listed above, A through D, new uses proposed in the Agricultural Lands Use District.]

Scope of EIS requirement vs scope of prescriptions for implementation

[The potential improvement noted would be accomplished by the amendment of HRS 343-4(a) in HB 125]

Impact-Probability criterion for requiring EIS's

A loophole in the EIS requirement for actions that may have significant environmental impact is provided in the wording of Act 246 relating to the probabilities of such impacts as criteria for the requirement. It must be recognized that a significant impact may not be recognized until an analysis has been made. If the analysis is not undertaken unless a significant impact is known in advance, the impact cannot be recognized. How certain it must be that significant impacts will occur or not occur before an EIS should be required is, thus, critical.

It does not seem generally recognized that the Act and the regulations actually separate actions (those which fall within one or more of the governmental or private classes previously mentioned) into three sets on the basis of differing probabilities of significant impacts. One set easily recognized is comprised of those actions "which will probably have significant effects" [HRS 343-4(1) and (2) (A thru E)]. For this set EIS preparation is mandatory.

An easily recognized second set is defined by the lists of "classes of action. . . which . . . will probably have minimal or no significant effect on the environment" that EQC was mandated to establish [HRS 343-5(6) and (7)]. The mandate has been met in the form of an overall list compiled by EQC itself [EQCR 1:33a], modified by certain qualifications [EQCR 1:33b], and detailed in lists compiled by agencies subject to EQC approval [EQCR 1:33d]. The members of this set of actions "shall be exempt from the preparation of a statement."

The third set is not generally recognized, it is comprised of those actions which "may have a significant effect on the environment" but do not fall within the first set. For an action in this set a significant impact is possible, but cannot be considered probable without analysis. For a government action in the set, a proposing agency may require of itself the preparation of an EIS [HRS 343-4(b); EQCR 1:31a]; and for a private action in the set, an approving agency may require the preparation of an EIS by the applicant [HRS 343-4(c); EQCR 1:22a, 1:23a and 1:31a].

To recapitulate, if before analysis of the effects of an action:

- i. It seems probable that there will be a significant impact, EIS requirement is mandatory;
- ii. It merely seems possible that there will be a significant impact, EIS requirement is optional, and
- iii. It seems probable that there will not be a significant impact; EIS requirement is prohibited.

On general grounds it may be argued that only two sets of actions need be recognized, those for which EIS's are required and those for which they are not. Experience with the effects of the Act indicates that only one impact probability criterion is needed, and that criterion should be that the action may have a significant impact. Only proposing agencies in the case of government actions and approving agencies in the case of private actions have the powers to distinguish actions that will probably have significant effect from those that may have significant effect; those agencies will make most of the distinctions between actions that may have significant effect and those that probably will not, and those same agencies will make the final decision whether EIS's will be required or not. Unless it is petitioned for a ruling, the EQC has powers only to establish the list of classes of action for which EIS's will not be required because no significant effect is probable. Hence, it might be suggested that Act 246 be amended to reduce the three sets of classes of actions to two--those that will require EIS's and those that will not.

The actual assignments of actions among the three sets since Act 246 has been implemented indicate that the change should be recommended and not just suggested. The record of assignments also bears on the choice of the criterion on which the decisions should be based.

In practice, as might be expected, proposing agencies have tended to exempt their own actions from EIS preparation in case of doubt, either by class through their lists of categorical exemptions, or by individual determinations that EIS's are not necessary. Their lists of categorical exemptions include actions for which they are approving agencies as well as those which they approve. Hence the tendency has affected private actions as well as government actions. The tendencies can be documented from the Environmental Center experience in reviewing individual and class decisions as to exemptions from EIS preparation requirements.

It should be recognized that, for an action not on an exempt list, the screening process begins with an assessment required by Act 246 [HRS 343-4(b) and (c)]. The assessment process has been formalized in the EQC Regulations and results in either a Negative Declaration or an EIS Preparation Notice [EQCR 1:31c]. The assessment should be expected to indicate in general what kinds of impacts are most likely to result from the action. The degree of probability of these impacts and their significance are, however, matters to which the EIS itself should be addressed, and impacts not identified in the assessment may very well come to light in the processes of preparation and review of the EIS. Hence, whether a significant impact probably will or probably will not result from an action cannot satisfactorily be determined until the EIS is prepared, and the basis of the requirement for EIS's to actions for which significant impacts are previously known to be significant is a serious limitation to the system.

It should also be recognized that even an initial assessment is not required in the case of an action categorically exempted. The Regulations provide that "all such exemptions . . . are inapplicable when the cumulative impact of planned successive actions of the same type, in the same place, over time is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment" [EQCR 1:33b]. There is, however, no effective mechanism by which actions on an exempt list will be examined as to potential cumulative effects or particularly sensitive environments.

Reluctance to extend the requirements of the EIS system seems clearly to have two bases. One is the confusion between EIS acceptance and action approval which is discussed elsewhere in this statement. The other is the mistaken concept that an EIS is necessarily a lengthy document involving considerable expense and time to prepare. The requirements as to the extensiveness and detail of an EIS should actually relate to the gravity of the impacts that may possibly result from an action. A simple assessment that indicates that significant effects are quite improbable from any particular action could be considered an acceptable EIS just as well as the basis for a Negative Declaration. There is therefore no valid reason for not requiring an EIS when there is doubt whether a significant impact may result from an action.

It is therefore recommended:

That Act 246 be amended so that EIS's will be required for actions that may have significant impact and not merely those that will probably have significant impact.

Agency-approval criterion for requiring EIS's

[One potential improvement noted would be accomplished by the amendment of HRS 343-1(3) in HB 125. However, the proposed amendment of 343-1(5) would negate a second suggested improvement. See Appendix A.]

EIS requirements for coastal actions

[The potential improvement noted would be accomplished by the amendment of HRS 343-5 in HB 125.]

Exemptions

Essentially all human actions have environmental effects, but the impacts of by far the greater number of actions are of negligible significance in the context of an EIS system. Provisions for categorical exemptions from EIS requirements are entirely appropriate. The provisions in Act 246 for such exemptions consist of two subsections mandating the EQC to establish the lists of classes of action which "shall be exempt from the preparation of a statement" to which reference has been made in the discussion of the EIS requirements. As implied in that discussion, the interpretation of these subsections by EQC and other agencies leaves much to be desired. It is the purpose of this discussion to indicate how improvements may be made, and to call attention to a minor unproductive redundancy in the Act.

Unnecessary redundancy

[The potential improvement noted would be accomplished by the amendment of HRS 343-5 in HB 125.]

Classes exempt by EQC

As has probably become apparent from the discussion of EIS requirements, the problems of distinguishing between actions which as a class should be categorically exempt from EIS considerations, actions which individually by assessment should be exempt from full-scale EIS preparation, and actions for which EIS preparation should be required are difficult ones. As provided in the EQC regulations, the listing of classes of action to be exempted from EIS consideration, mandated by Act 246, consists of a general list prepared by EQC [EQCR 1:33a], with certain exceptions noted by EQC [EQCR 1:33b] and subject to amendment [EQCR 1:33c]; more detailed lists mandated to be developed by agencies subject to EQC approval [EQCR 1:33d]; and the general class of emergency actions [EQCR 1:33f]. In principle the approval is wise, and with few exceptions the provisions in the regulations themselves are appropriate.

The major exception is in the inclusion of topographical features with existing structures, facilities, and equipment for which maintenance is exempt [EQCR 1:33a.1]. Topographical features are natural features subject to natural change. An interference with a natural change is just as much an environmental impact as is an inducement of a change to a natural feature. In some cases the artificial maintenance of a topographic feature is appropriate--in other cases it is not.

Outstanding among such features whose artificial maintenance is attempted are beaches. No listing of examples seems necessary to indicate that some beach maintenance activities are successful but some have highly significant undesirable environmental impacts. Categorical exemption of beach maintenance operations from EIS requirements is quite inappropriate.

The recognition of exceptions to the general classes of exemptions reduces the inappropriateness of the present exemption of maintenance of topographic features, but not sufficiently. Together with the cumulative effects of successive actions, the undertaking of an action "in a particularly sensitive environment" constitutes an exception to the exemption [EQCR 1:33b]. However, the need for maintenance of a beach stems from its susceptibility to change, hence every beach requiring maintenance must be considered to be in a sensitive environment. It can be interpreted that only extreme beach maintenance needs indicate a particularly sensitive environment, and most beach maintenance activities, even though they have significant environmental effects will be exempted.

Similar arguments can be made in the case of other natural features such as stream banks and flood plains. It cannot be represented that maintenance of natural features is necessarily undesirable, but only that the environmental impacts of each program of maintenance of a natural feature should be analyzed, as is required in the preparation of an EIS.

It is recommended:

That the Legislature, by resolution, request that the EQC delete the maintenance of natural features from its list of categorical exemptions from EIS requirements.

Types of action exempt by agencies

Probably the gravest inadequacies of the State EIS system relate to the lists of types of actions to be exempt that are compiled by agencies under the provision of the EQC regulations. This provision specifically requires that these lists must be "consistent with both the letter and intent expressed in these exempt classes [established by EQC] and Chapter 343, Hawaii Revised Statutes" [EQCR 1:33d]. The inadequacies may stem from the fact that no agency has or can be expected to have adequate broad internal environmental competence and the tendency of each agency to promote its own programs and hence to minimize the disclosure of environmentally detrimental impacts of those programs. To the extent the lists have been approved by the EQC, the inadequacies may stem from limitations of staff and funds of the EQC, inadequate consultation with other agencies having environmental competence, or simply insufficient provision or attention to review. It should be noted that the burden on the EQC is great. In September 1975 alone, 206 classes of action were submitted for exemption approval to the EQC.

For the purposes of discussion it seems desirable to distinguish between three sets of types of actions:

- i) Types of actions that can obviously without more than the most cursory assessment be regarded as having, without exception, no significant environmental impact.
- ii) Types of actions that can be found by assessment to have, without exception, no significant environmental impact.
- iii) Types of actions that can be found by assessment to have, no significant environmental impact generally, but including a few actions that may have a significant impact.

There is, of course, no concern with the types of the first set. Common sense indicates that an exhaustive search for and listing of these types would be unproductive. The distinction between the second and third sets is, however, important. Careful assessment will be necessary to determine which particular actions may have significant environmental effects within a class which in general would not have such effects.

The EQC regulations do not call for any assessment of a class of actions proposed for categorical exemption from the EIS requirements. Even assessments carried out under the EQC provisions would be limited in their utility. These provisions, restricted to individual actions require documentation and notice of determination, but leave optional the public distribution and review of the documentation [EQCR 1:31].

In practice the exemption lists submitted by some agencies have been published and approved without even identifying which general EQC exemption class justifies the exemption of each listed type of action [eg. exemption lists proposed by State Dept. of Transp., City and County Dept. of Transp. Serv., and County of Hawaii: EQC Bull. 8 Sept. 75]. The lists lack any indications of the location, scope, duration or intent of the actions proposed for exemption. The lists include indiscriminately action types of the first set that should questionably be considered at all [eg. litter container pickups, window modification], types of the second set that should be considered but probably in their entirety should be exempt, types of the third set that clearly include actions that should not be exempt [eg. chemical control of vector] and even of actions that should generally be subject to specific individual assessment [eg. sand replenishment to existing beaches, releases and recoveries (of plants and animals)].

It should be especially noted that although the EQC has provided for exceptions to the exempt classes [EQCR 1:33b], it has prescribed no means for implementing this provision, even in the case of an exemption to its own list of classes.

The inadequacy of the present exemption could be remedied without amendment of Act 246 and solely by the use of procedures already provided in the EQC regulations.

As already indicated, the assessment procedure [EQCR 1:30] could effectively be used to screen the exemption lists proposed by agencies. The definition of assessment [EQCR 1:4h] would have to be revised to make the procedure applicable to types of actions proposed for exemption, and the assessment procedure should be prescribed in the provision for agency proposals for exempt classes [EQCR 1:33].

In addition to the assessment, an EIS might very appropriately be called for in the case of any type of actions for which the exemption decision is difficult, under the provision of the Act that "a group of actions may be treated by a single statement" as authorized by the Act [HRS 343-5(2)]. The EQC regulations now provide for EIS's for groups of actions in the case of both government actions [EQCR 1:12c] and private actions [EQCR 1:22a].

The exempt types would have to be carefully defined so as to exclude all actions that might have a significant impact or to identify those circumstances under which an assessment would be made for an individual action within the class. The provision in the Rules of the EQC [Subpart d] that "an interested person or agency" may petition the EQC for a "declaratory order on the applicability of any statutory provision or of any rule or regulation or order of the Commission" will allow for public challenge in case an action has been improperly exempted under the procedures described.

It is recommended:

That the Legislature by resolution call upon the EQC to apply its assessment procedures to the exemption types and classes proposed by agencies in the future, to use the provisions for group action EIS's in the case of difficult decisions as to exempt types or classes and review all exemption-type lists already approved using the same procedures.

Public Input

Under the State EIS system the proposer of a project, government or private, has the responsibility for preparing the EIS on the project. This has a distinct advantage in the encouragement of close coupling between environmental analysis and project planning. A distinct disadvantage lies in the pro-project bias on the part of the project proposer. The effects of bias can be offset only in review by other agencies and the public. However, the time limits set for the review process in Act 246 and the EQC regulations limit the effectiveness of the review process.

The Act provides that, in the case of a private action, "The agency receiving the request shall, within sixty days of receipt of the statement, notify the applicant and the commission of the acceptance or non-acceptance of the statement [HRS 343-4(c)]. To provide maximum time for review within the 60 days, the EQC regulations permit formal receipt of the statement only twice a month, just before publication of the EQC Bulletin, and allow 30 days after publication for review. A period of 14 days thereafter is provided for response, leaving about two weeks for review by the EQC, if its recommendation is requested, and for consideration by the accepting agency. Although the Act does not require that the 60-day time limit be placed on the review of EIS's for government actions, the EQC has prescribed the same schedule for such EIS's. Whether the legislature intended so much to limit the time available for public review of an EIS as to limit the time available for its agency consideration is questionable. The disadvantages of the present time limitation have been alleviated by the EQC in its provision for a consultation period prior to EIS submission. However, in the case of government actions, the undesirable effect of the limitation could be eliminated by restricting the applicability of the EQC time limits to private actions.

Allowance of unlimited time for review would, of course, not be feasible. The 30 day limit for initial review is not unreasonable, even for the EIS on a government agency action. It is, however, undesirable that the public and other agencies be unable to comment on inadequate responses by a proposing agency to original review comments. There seems to be no reason why the proposing agency should not provide for a second round of review of an EIS if divergences of opinion have not adequately been reconciled in the first round. If the time limit for acceptance of private applicant EIS's is not changed, it is recommended:

That the Legislature, by resolution, indicate to the EQC, the undesirability of applying to the review and response processes for government agency EIS's the same time limits that are required for private applicant EIS's.

Consultation

To reduce the undesirable effects of the time limits on the response and review imposed by the Act in the case of private EIS's and extended by the EQC to agency EIS's, the EQC Regulations provide for a kind of informal pre-filing review in the form of consultation with appropriate agencies, citizen groups, and individuals [EQCR 1:41].

The success of this provision seems limited by inadequate specifications as to the information to be submitted to the appropriate groups and individuals for their consideration. If the consultation is effectively to substitute for some of the interchange that must otherwise occur during the formal review process, the information submitted should represent as nearly as possible the contents that will be required in the EIS, but the regulations require only the submission of the EIS Preparation Notice and a request for consultation [EQCR 1:41a].

The limitation particularly affects the extent to which the Environmental Center can contribute to the consultation process on an EIS. If the Center were to respond to a request for consultation accompanied only by a preparation notice, it could quite legitimately be accused of undertaking work that could be undertaken by a paid consultant. Only recently has the Center received requests for consultation accompanied by documents representing so nearly complete EIS's that it has considered consultation appropriate.

If the time limits for EIS acceptance in the Act are not modified, it is suggested that:

The Legislature amend Act 246 to incorporate the EQC's provisions for "Consultation prior to filing" but requiring that a document submitted for consultation address essentially the same subjects as those listed as required in an EIS; or

That the Legislature by resolution advise EQC to incorporate such a requirement as to content in its provisions for "Consultation prior to filing EIS."

Application of Time Limit

It may be that the 60-day time limit imposed on the review, response, and acceptance of an EIS on a private action was actually intended to apply to the consideration of an agency whether an EIS, already reviewed and revised was acceptable or not.

If Act 246 were amended so that the time limit were to apply to the period after review and response, or even after review, the limit would present no problem. Indeed the time allowed could well be reduced to 30 days. Although pre-submission consultation would still be desirable, there would be no need for EQC's extensive provisions for the consultation process, no need for its amendment as suggested above. It is suggested:

That Act 246 be amended to make the time limit for the consideration of an EIS for a private action applicable only to the period after the submission of the EIS as it has been revised on the basis of review and to reduce the time limit from 60 to 30 days.

Coordination

Prior to the implementation of Act 246, there was in effect a limited State EIS system, established by Executive Order of the Governor [August 23, 1971], that was applicable to actions that would use state lands or funds. In this prior system the Office of Environmental Quality Control [OEQC] had an important coordinating function not only in the mechanics of EIS review but in the decisions whether EIS's were required or not and, when prepared, whether they were acceptable or not.

Under Act 246 the entire EIS system has been decentralized. The EQC's role is limited to adoption of the Regulations under which the system operates, interpretations of the Regulations by petition, recommendations as to EIS acceptability upon request, reviews of non-acceptances upon appeal, and the provision of the means for public information.

State actions

[The potential improvement noted seems to have been accomplished by executive action.]

County actions

It may well be that a County might wish to provide some county agency with coordinating powers in the handling of EIS's relating to actions proposed by agencies in that county similar to those previously exercised by the OEQC with respect to state agency actions. It is suggested that:

Act 246 be amended to provide that a county may provide coordinating powers with respect to those EIS's that are subject to acceptance by the Mayor similar to those that were provided to the OEQC under the Governor's Executive Order.

Supplemental EIS's

Both Act 246 and the EQC regulations stress the importance of early address to the environmental impacts of an action [HRS 343-4(b) and (c); EQCR 1:30a, 1:40, and 1:60]. Preparation of an EIS early in the process of planning for a project will assure that broad aspects of environmental impacts will be disclosed early so that they may be taken into account and adverse aspects minimized during the planning process. Important environmental impacts of a project, however, may depend upon details of the project plans that have not been established early in the planning process. Some of the environmental impacts of a highway, for example, may depend critically upon the exact alignment of the highway and the extent to which it is constructed at grade, in cuts, and in fills, or on an elevated structure. An EIS prepared early in the highway planning process may, therefore, be unable to address adequately some of the environmental impacts.

In addition, with the passage of time, analytic capabilities related to environmental impacts may be expected to change and concepts of the significance of an impact may be expected to change. An EIS considered acceptable at one time might be judged unacceptable before the project to which it pertains is initiated if there is a lapse of several years between the date of EIS preparation and the date of project initiation even if the plans for the project had not changed.

The EQC regulations compensate reasonably well for the limitations associated with requiring an EIS early in the project planning process. They provide for the requirement of a supplemental EIS if the scope of the project is substantially increased, if the intensity of the impacts will be increased, if the mitigation measures originally planned are not to be implemented, or if "new circumstances or evidence have brought to light different or increased environmental impacts not previously dealt with" in the original EIS [EQCR 2:10].

Act 246 makes no provision for supplemental EIS's. Indeed it specifies that "A statement that is approved with respect to a particular action shall satisfy the requirement of the chapter and no other statement for that proposed action shall be required" [HRS 343-4(g)]. The EQC has attempted to reconcile its provision for supplemental EIS's with this specification on the grounds that an action, so modified in the course of the development of plans as to have significantly different impacts from those originally estimated, is an essentially different action from that originally proposed [EQCR 2:00].

The EQC provision for the requirement of supplemental EIS's is a wise one. It provides perhaps the only assurance a project will actually be carried out in conformity with the plans presented in an EIS. A mandate in Act 246 that a project must conform to its description in an EIS would be of doubtful effectiveness unless means were provided to enforce conformity and penalties were prescribed for failures to conform.

To avoid any challenge to the provision regarding supplemental EIS's in EQC's Regulations, it is recommended:

That Act 246 be amended to provide that supplemental EIS's may be required if the impacts of an action will differ significantly from those estimated in the original EIS for the action because, for example, the plans for the action have been changed or developed in greater detail, or if, in the passage of a considerable interval of time between the preparation of the original EIS and the initiation of the action, impact analytic capabilities have been significantly improved or concepts of the significance of impacts have been significantly altered.

[The potential improvement noted would be accomplished in the case of private action, but not in the case of agency actions, by the amendment of HRS 343-4(c) in HB 125.]

Appeals

Act 246 contains provisions for appeals to the EQC and to the courts. Discussed herein are possibilities for extending the provisions for appeal to the EQC, for enlargement of the scope of issues that are referable to the courts, and for a minor change in standing in relation to specific issues.

Act 246 and the EQC regulations provide that an applicant may appeal an agency's decision that his EIS is not acceptable [HRS 343-4(c); EQCR 1:80]. No provision is made for an appeal to EQC that an EIS has unjustifiably been accepted or that a Negative Determination or EIS Preparation Notice have unjustifiably been issued.

It would seem that the same rationale for granting an applicant the right to appeal an EIS non-acceptability decision would apply in the case of an EIS preparation notice which he considered unreasonable. In both cases the applicant may appeal to the courts, but in either the case of an agency's decision that an EIS is required or the case an agency's decision that an EIS is not acceptable, an applicant may appeal to the courts if he considers the decision unreasonable. It seems just as reasonable in the first case as in the second that his first recourse might be the EQC. An applicant presumably would never wish to challenge a decision that an EIS was not required or that an EIS was acceptable, but it would seem appropriate that another agency than the approving agency might appeal to the EQC in the case of a Negative Determination or EIS acceptance that it considers improper.

It is recommended:

That the provisions of Act 246 for appeal by an applicant to the EQC be extended to cover EIS Preparation Notices.

In addition it is suggested:

That the provisions of Act 246 for appeals to the EQC be extended to cover appeals on Negative Determinations and EIS acceptances from agencies other than the approving agency.

[The right to appeal to the EQC concerning improper Negative declarations and improper EIS acceptances might well be extended to aggrieved persons as well as agencies.]

Issues referable to the courts

Act 246 contains provisions respecting the initiation of judicial proceedings respecting several kinds of EIS-related issues (HRS 343-6).

a) i) A lack of determination that an EIS is or is not required for a proposed action not otherwise exempted.

ii) The undertaking of an action by an agency without determination that an EIS is or is not required.

b) The determination that an EIS is or is not required.

c) The acceptance or non-acceptance of an EIS.

This list of issues fails to include some that appear very similar to those included. The failure is perhaps not serious, because the list is presented in the Act merely as a base for establishing time limits for initiating judicial proceedings. However, it implies that proceedings cannot be brought in relation to other issues. If time limits for initiation of proceedings related to other issues seem as important as those recognized.

One specific omission from the list is an extension of a)i): A lack of determination that an EIS is or is not required for a proposed action that has been improperly exempted, whether the exemption has resulted from improper interpretation of an exemption in the Act, or improper inclusion in or interpretation of EQC's exemption list [EQCR 1:33a] or an agency's exemption list [EQCR 1:33d].

A second omission is similar to a)ii): The undertaking of an action subject to Act 246, whether by an agency or a private party, for which an EIS has been determined as required but for which no EIS has been prepared, reviewed, and accepted.

It is recommended:

That provisions be added to Act 246 covering judicial proceedings respecting:

i) A lack of determination that an EIS is or is not required for an action improperly exempt by interpretation of the Act.

ii) The undertaking of an action by a private party without assessment,

iii) The undertaking of an action for which an EIS has been required but for which no EIS has been accepted.

Standing in the courts

[The potential improvement noted would be accomplished by the amendment of HRS 343-6 in HB 125.]

Environmental analysis in relation to planning

EIS systems have been designed to relate to specific projects rather than to comprehensive and land-use plans. Act 246 specifically excludes from the actions requiring EIS's those "proposing new county general plans or amendments to any existing county general plan initiated by a county" [HRS 343-4(a)(2)(E)]. The exclusion is recognized in the EQC Regulations [EQCR 1:13]. Yet, surely in relation to the broad aims of the EIS system, the identification and analysis of the environmental implications of comprehensive and land use plans is as important or more important than the identification and analysis in the case of the individual projects that may be undertaken within those plans.

The content requirements for an EIS prescribed in the EQC Regulations [EQCR 1:42] appear entirely appropriate to the needs for identification and analysis of the environmental implications of a comprehensive plan, except that "The relationship of the proposed action to land-use plans, policies and controls for the affected area" [EQCR 1:42d] would have to be interpreted as referring to the relationship of the proposed plan to other plans.

The presentation of the environmental implications of a plan to the public, the provision for public review and comment, and the requirement for response to public comments that are integral parts of the State's EIS system seem clearly desirable. Although the procedures for adopting comprehensive and land-use plans do include these processes, actual practices suggest either that the requirements for their inclusion are not sufficiently extensive and explicit or that they are not adequately followed.

Of the provisions in Act 246 and the EQC regulations, the only ones that would seem particularly inappropriate in the development and adoption of comprehensive plans and major land-use plans are the time limitations. No time limits are actually imposed by Act 246 for actions that require EIS's because they will use state and county lands or funds, but the EQC regulations subject the EIS procedures pertaining to such actions to the same time limits as pertain to the public review and the response to review comments [EQCR 1:61-62] in the case of private action EIS's.

Some time limits to the opportunity for public review of proposed comprehensive plans and major land-use decisions at any particular stage may actually be desirable, and the important limitations may be in the provision in the present system for only one formal review and the time limit to the response period. It would seem advantageous in the case of these major plans and decisions to allow for much more extensive response to the public comments received in a review, for subsequent presentation for review of a revised statement of environmental impacts, and for repetitions of the review and response cycle until the major issues have been presented with clarity.

Assuming the time-limit problem can be resolved, the major argument against requiring EIS's for comprehensive plans and major land-use decisions would seem to be the fact that the judgment whether a particular plan should be adopted or not or a particular land-use decision should be made or not is much less clearly

separable from the judgment whether an EIS pertinent to the plan or decision is acceptable or not than in the case of a specific project and the EIS pertinent to it.

Our abilities to identify and analyze the implications of broad plans and major land-use decisions are much more restricted relative to the needs, than in the case of specific projects. Judgments as to the acceptability of statements on the implications of comprehensive and land-use plans are very nearly as subjective as the decisions whether or not to adopt the plans.

Surely, however, extensive and intensive efforts to identify and analyze the environmental implications of comprehensive and land-use plans is highly desirable. In recognizing that feasibility of planning studies are exempted by Act 246 from the EIS requirement, the EQC Regulations state that: "Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and available alternatives and disclose such considerations in any subsequent statements" [EQCR 1:13].

It is suggested that:

The Legislature consider extending to the comprehensive and land-use planning processes of the State and counties the principles of environmental impact identification and analysis.

The extension should not be considered as requiring, overall, an unjustifiable increase in the amount of environmental analysis. The requirement for incorporation of procedures for such identification and analysis in the planning processes could in fact reduce significantly the amount of identification and analysis required on a case-by-case basis in relation to individual projects. Act 246 and the EQC Regulations recognize that: "Whenever an agency proposes to implement an action or receives a request for approval, the agency may consider and, where applicable and appropriate, incorporate by reference in whole or in part previous determinations of whether a Statement is required and previously accepted EIS's [HRS 343-4(e); EQCR 1:32]. The Regulations further provide that: "A group of proposed actions shall be treated as a single action when: (1) the component actions are phases or increments of a larger total undertaking; (2) an individual project is a necessary precedent for a larger project; [or] (3) an individual project represents a commitment to a larger project" [EQCR 1:12c and 1:22b]. The single action best treating a group of related projects is the adoption of the plan incorporating or implying the incorporation of the individual projects. The EQC Regulations already require in the contents of an EIS for a specific project a discussion of "The relationship of the proposed action to land-use plans, policies, and controls for the affected area" [EQCR 1:42d].

If specific address to the environmental implications of a comprehensive or land-use plan is required through amendment of the EIS Act it is recommended:

That Act 246 be further amended so that the present limitation to but one EIS for an action be modified so that a supplementary EIS may be required for any project undertaken under the plan if such a project may have environmental impacts differing in any significant way from those foreseen when the plan was adopted.