PART 4: THE MULTIPLE SCREENING PROCESS

Introduction

In this part, we examine the process by which actions are reviewed to determine the extent to which they impact the environment and the level of environmental analysis that will be performed.

In the 1978 report of the state EIS system (Cox et al., 1978), it was recognized that:

"...all human actions have environmental impacts, but that the impacts of most are so minor, so well recognized, or so universal that their special appraisal is not warranted. The most cost-effective EIS system is one that provides for successive stages of appraisal through which actions are eliminated successively from further concern on the basis of improbabilities that they will have significant impacts, the appraisals becoming more intense in the successive stages" (p. 43).

These successive stages of appraisals of actions, which are so important to an efficient and effective EIS system, are found in most EIS systems in other states. The authors of the 1978 EIS study identified the successive stages of appraisal that were found in the Hawaii EIS system as the multiple screening procedure.

"The procedures for actions proposed by agencies differs in detail from that for actions proposed by applicants. However, the principal steps in both procedures are identical and may appropriately be described as constituting a multiple-screening procedure" (p. 45).

The state EIS system utilizes multiple screens in an effort to determine which actions may have a significant impact on the environment and would thus require the level of information disclosure called for in an EIS, and which actions will require a less detailed disclosure of information or no disclosure at all, because they will have little or no environmental impact. The first screen determines whether an action is subject to chapter 343 HRS. There are eight criteria listed in section 343-5 HRS that generally determine what actions are subject to the law. Actions meeting any of the eight criteria go to the next level of screening. Each of these conditions will be reviewed in detail below.

The second screen determines if an applicable action falls within one of the exempt categories. Section 343-6(a) (7) directs the Environmental Council to establish "procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment." The classes of exemptions are found in section 11-200-8 of the EIS Rules. Exemptions will be discussed in detail in a later section of this part.

The third screen determines if an applicable action not otherwise exempt may have a significant effect on the environment. Determining whether an action may have a significant effect on the environment is a two step process. The preparation of an initial document, called an Environmental Assessment (EA) is required by section 343-5(b) and 343-5(c) HRS. The EA is an initial examination of the environmental effects of an action. Based upon the written assessment, agencies determine whether an action may have a significant effect and therefore will require an EIS, or will not have a significant effect and hence will not require an EIS.

For actions that meet the applicability requirements, the purpose of the screening process is to eliminate those projects that will have little significant effect on the environment. The results are that the requirement for full disclosure of environmental impacts is reserved for those actions that may have a significant effect. Table 4 lists the number of assessments made and EISs required from January 1979 through 1990.
Table 4. Environmental Assessment Determinations from 1979 through 1990: the ratio of EIS Preparation Notices to the Environmental Assessment Determinations issued under the Hawaii State EIS system

<table>
<thead>
<tr>
<th>Year</th>
<th>Environmental Assessment Determinations (EA)</th>
<th>Preparation Notices (PNs)</th>
<th>Negative Declarations (NDs)</th>
<th>Ratio PN/EA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>306</td>
<td>39</td>
<td>267</td>
<td>.127</td>
</tr>
<tr>
<td>1980</td>
<td>272</td>
<td>19</td>
<td>253</td>
<td>.070</td>
</tr>
<tr>
<td>1981</td>
<td>252</td>
<td>31</td>
<td>221</td>
<td>.123</td>
</tr>
<tr>
<td>1982</td>
<td>233</td>
<td>25</td>
<td>208</td>
<td>.107</td>
</tr>
<tr>
<td>1983</td>
<td>221</td>
<td>23</td>
<td>198</td>
<td>.104</td>
</tr>
<tr>
<td>1984</td>
<td>227</td>
<td>15</td>
<td>212</td>
<td>.066</td>
</tr>
<tr>
<td>1985</td>
<td>250</td>
<td>19</td>
<td>231</td>
<td>.076</td>
</tr>
<tr>
<td>1986</td>
<td>298</td>
<td>38</td>
<td>260</td>
<td>.128</td>
</tr>
<tr>
<td>1987</td>
<td>272</td>
<td>37</td>
<td>235</td>
<td>.136</td>
</tr>
<tr>
<td>1988</td>
<td>289</td>
<td>35</td>
<td>254</td>
<td>.121</td>
</tr>
<tr>
<td>1989</td>
<td>284</td>
<td>30</td>
<td>254</td>
<td>.106</td>
</tr>
<tr>
<td>1990</td>
<td>311</td>
<td>34</td>
<td>277</td>
<td>.109</td>
</tr>
<tr>
<td>Total</td>
<td>3,215</td>
<td>345</td>
<td>2,870</td>
<td>.107 (avg)</td>
</tr>
</tbody>
</table>

Source: OEQC Bulletin

The Applicability Screen

Introduction

The initial screen deals with the applicability of the law to proposed actions. Section 343-5 HRS lists eight criteria, any one of which can trigger an action's inclusion in the EIS process. An action is subject to chapter 343 HRS coverage if it: 1) proposes a use of state or county lands or monies; 2) proposes a use within the conservation district; 3) proposes a use within the shoreline area; 4) proposes a use within any historic site designated in the National or Hawaii Register; 5) proposes a use within the Waikiki area; 6) proposes an amendment to existing county general plans except those initiated by the county; 7) proposes a reclassification of any lands classified as conservation; or 8) proposes the construction of a new or modification to an existing heliport under certain conditions.

Background

Under the Governor's Executive Order of 1971, coverage of the EIS system was limited to those projects using state lands or state funds. Subsequently, Act 246 (1974) specified distinct criteria for coverage of actions proposed by agencies and actions proposed by private concerns. According to Act 246 coverage of the EIS system was extended to public actions "which will probably have significant effects and which propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded..."

Actions proposed by applicants (private concerns) were subject to coverage of the EIS system if they would have significant effects and if they proposed:
i. any use within lands classified as conservation district by the State Land Use Commission
ii. any use within the shoreline area as defined in section 205-31 HRS
iii. any use within any historical site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665
iv. any use with the Waikiki area of Oahu
v. any amendment to existing county general plans where such amendments would result in designations other than agriculture, conservation, or preservation, ... except all actions proposing any new county general plan or amendments to any existing county general plan initiated by a county

The EIS study (Cox et al., 1978) listed a number of bills introduced as legislation which called for a variety of coverages for both public and private acts. The bills and their coverages are summarized in table 5.

<table>
<thead>
<tr>
<th>Legislation (year introduced)</th>
<th>Proposed Applicability Criteria for Requiring Environmental Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 36 (73); SB 576 (73)</td>
<td>All major Actions</td>
</tr>
<tr>
<td>SB 1841 (73)</td>
<td>Construction projects subject to county permits and slaughter house construction subject to state permits.</td>
</tr>
<tr>
<td>HB 111 (73)</td>
<td>Public construction projects and private construction projects on conservation lands.</td>
</tr>
<tr>
<td>HB 113 (73); HB 1794 (73)</td>
<td>Major private actions.</td>
</tr>
<tr>
<td>HB 1522 (73); HD 1 (73)</td>
<td>Public and private projects, except as exempt under regulations.</td>
</tr>
<tr>
<td>HB 1792 (73); SB 2110 (74)</td>
<td>Actions as defined in NEPA.</td>
</tr>
<tr>
<td>SB 1826 (74)</td>
<td>Building construction and land development projects other than those for single family residence, except as exempt under regulations.</td>
</tr>
<tr>
<td>SB 893 (74)</td>
<td>Changes in land-use classification or county general plans.</td>
</tr>
<tr>
<td>SB 2040 (74); HB 2067 (74); HB 2857 (74)</td>
<td>Projects using state or county lands or funds, and projects requiring government agency approvals.</td>
</tr>
</tbody>
</table>
Amendments to the Applicability Section

In 1979, section 343-5(a) HRS was amended by Act 197 for primarily editorial purposes. The distinction between public and private actions was removed by combining the criterion concerning the use of state or county lands or funds with those that govern applicant actions.

In 1980, the use of state or county lands or monies criterion, section 343-5(a)(1) HRS, was amended by adding a clause exempting the acquisition of unimproved lands from further EIS consideration.

In 1987, a seventh and eighth criteria were added to the existing six criteria by Act 187 and Act 325. One of the new criteria called for an EA for actions that proposed any reclassification of any land classified as conservation district by the state land use commission under chapter 205 (Act 187). The other criterion called for an EA for actions that proposed the construction of new, or modification of existing helicopter facilities within the state which by way of their activities may affect any land classified as conservation district by the state land use commission under chapter 205; the shoreline area as defined in section 205A-41; or any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665 or chapter 6E; or until the statewide historic places inventory is completed, any historic site found by field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places. (Act 325)

Expanding the coverage to actions that propose changes in the land use designation from conservation land was one of the changes to the law recommended in the 1978 EIS study (Cox et al. 1978). This closed a loophole that existed under previous provisions of chapter 343 HRS. Applicants could initiate a request for a land use boundary change from conservation without applying for a discretionary permit from any agency explaining what they proposed to do on the land. If the boundary change was approved and proper zoning could be obtained from the county, an applicant could avoid EIS system requirements because the land on which the proposed action was to take place would no longer be in the conservation district. This amendment was also in accord with a court decision regarding the applicability of the EIS system to reclassification of conservation land noted in an Environmental Center review of similar legislation (Hawaii. University. Environmental Center, 1985).

Expanding the coverage of the EIS system to actions dealing with heliports is potentially a more significant development. The EIS process is triggered when an action is either proposed by a state agency or is proposed in one of several broad categories of actions listed in section 345-5(a) HRS. The addition of the eighth criterion (the building or modification of a heliport) set the precedence for an individual action as a "trigger" for inclusion in the EIS system.

Two additional changes were made to the applicability section (section 343-5 a) of chapter 343 HRS. The first change was of an editorial nature, which changed the citation for the definition of the shoreline in criterion 3, from section 205-31 HRS to section 205A-41 HRS, to reflect a major rewrite of the Shoreline Protection Act. This change appeared in Act 187, Act 283 and Act 325.

The second change appeared as part of Act 187 and dealt with the delineation of the Waikiki area. The delineation in criterion 5 was changed from specific areas of Waikiki as designated on the development plan for Honolulu to the area established as the Waikiki Special District. This amendment seemed appropriate because, as noted by the Environmental Center in a review of SB 70 (1985) Relating to Environmental Quality, the former delineation of the Waikiki area referred to an out-of-date version of the General Plan for Honolulu. The review went on to point out that coverage under the definition of the Waikiki Special District would be "consistent with" that under the former definition.

Classes of Applicability

The eight applicability criteria listed in section 343-5 can be grouped into three categories: geographic, administrative, and specific-action, according to how they "trigger" scrutiny under Chapter 343 HRS. The geographic category, as its name implies, includes applicability criteria that "trigger" the EIS system because the actions proposed are located near particular places that are considered environmentally sensitive. Four of the applicability criteria fall within the geographic category: (1) Lands classified as conservation; (2) Shoreline area; (3) Historic sites; and (4) Waikiki area.
The administrative category groups the criteria that include actions that “trigger” consideration by the EIS system because they fall within a governmental jurisdiction. Three of the applicability criteria fall within the administrative category: (1) use of state or county lands and/or funds; (2) changes from conservation designation; and (3) changes made to county general plans.

The third category for applicability criteria is for specific actions. These are types of actions that “trigger” consideration by the EIS system because of the nature of the action itself. This category was created with the addition, in 1987, of the criterion to require an EA for construction or modification of a heliport. Heliports are the only action in this category at present but several others have been proposed including golf courses and aquaculture facilities.

The inclusion of heliports as an action that automatically “triggers” the EIS system introduces an intriguing possibility for changing the way of determining the applicability of actions to 343 HRS. In place of broad geographic and administrative categories that encompass a number of actions that “trigger” the EIS system, there could be a list of actions that would require the preparation of an EA. For any action proposed, it would only be necessary to examine the action list to determine whether it requires an EA. Because of this possibility, the study team was particularly interested in determining what EIS system users thought about listing specific actions as EIS system “triggers.”

Proposed Changes to the Applicability Section

A number of ideas for improving the applicability section of chapter 343 HRS were discussed by interview participants including proposed revisions in geographic categories, revisions to administrative categories, deletions of categories, provision for county options, substitution of permit based criteria for all geographic criteria, and generalizing the applicability of Chapter 343 HRS to include all projects not otherwise exempt. We summarized the leading opinions expressed by the interview participants and present them below within the category they effect.

Discussion: Changes and Additions to the Geographic Criteria

According to most participants, the rationale that should guide the selection of the types of actions that are subject to the EIS system is the protection of environmentally sensitive areas. Many suggestions were made for changes and additions to the existing geographic categories based on that rationale. We have summarized them below.

Special Management Areas

Foremost among the suggested extensions to the geographic category was the Special Management Area or SMA. SMAs were created by the Shoreline Protection Act of 1975 and later retained in the amended Shoreline Act which became the State’s Coastal Zone Management Act, chapter 205A HRS. SMAs are strips of land along the coast of each island stretching inland for not less than 300 feet, to which special requirements for development are imposed by counties.

SMAs were so designated because they are known to be areas most subject to rapid growth, development, population pressure, recreation needs, and the economic basis for tourism, the primary industry in the state. Extension of this consideration or regulatory process to cover proposed actions taking place in the SMA is a logical conclusion. The primary reason cited by the counties for not including actions in the SMAs as one of the triggers for HRS 343 is that requirements for environmental disclosure are already, or can be included, in some county SMA ordinances making state mandated EA duplicative and unnecessary.

Wetlands

Wetlands are another area of concern identified by those interviewed. In the past five years wetland protection has become a high priority within the federal government. A number of participants suggested that this national concern for wetlands should also be reflected at the state level in state policy. However, the need for a consistent definition of what constitutes a wetland was recognized as a key requirement before “wetlands” could be included as a triggering action.
Agricultural Lands

Lands in the agricultural districts, especially prime agricultural lands, as defined by the State Department of Agriculture, were thought to be another area which should be included. Prime agricultural lands, said some participants, are an important resource and merit special consideration before allowing non-agricultural uses to take place.

Marine Life Conservation Districts, Sanctuaries, and Special Streams

Marine Life Conservation Districts (MLCD), Marine and Estuarine Sanctuaries, and streams with unique or outstanding characteristics were proposed for inclusion in the geographic applicability criteria. Areas designated as MLCD or as sanctuaries are considered to have unique characteristics worth preserving. Hawaii's streams have been recently surveyed by the State Department of Land and Natural Resources (DLNR) and the National Park Service. At least 40 have been rated as special streams "which are important based on their diversity of resources, blue ribbon values or special areas" according to the draft report (Hawaii Stream Assessment, 1990). These areas, because they are judged to be environmentally sensitive, fit into the guiding rationale of the EIS system.

Historic Sites

Historic sites are already included as an applicability criterion. However, the criterion is limited to only those sites that are listed on the National or Hawaii Historic Register. These represent only a small percentage of significant historic sites in Hawaii. Places of cultural importance that may have insignificant physical remains or none at all, are not covered in the law. However, according to representatives of native Hawaiians, many areas of cultural significance can be tied to specific locations. Extending the coverage of the EIS system generally to any area of cultural or historical importance would leave open to controversy the interpretation of what is considered important. Broadening the criterion to include specific sites that the Office of Hawaiian Affairs (OHA), State Historic Preservation Office, or the Bishop Museum propose as being significant, may be a reasonable alternative to a more generally defined criterion. OHA has completed a study on ways to preserve Hawaiian Historic places, and it could be used as a basis for amending the historic site criterion. Care must be taken, however, that other ethnic cultures or historic sites are given appropriate recognition.

Historic, Cultural, and Scenic Districts

Areas defined as historic, cultural, and scenic districts by the City and County of Honolulu, and its counterparts on the neighbor islands might constitute another criterion for triggering the EIS system. The rationale is that if the Waikiki Special Design District is included, others might be also. Sites most often mentioned for inclusion include the Punchbowl Special Design District, the Civic Center and the Kakaako Special Design District. In the 1978 EIS report (Cox et al., 1978) the authors stated that Waikiki was an area of statewide importance that required special protection. Another area recommended for inclusion in that report was the Civic Center. Inclusion of county mandated special design areas as a trigger for the EIS system may be better handled through a provision to allow counties the latitude to include these areas under a county enabling provision in the law, which will be discussed in a later section.

Endangered and Threatened Species and Their Habitats

Endangered and threatened species and their habitats are those plants or animals that are in danger of becoming extinct. Hawaii has a disproportionate number of endangered and threatened plants and animals when compared to the rest of the country. Hawaii has more endangered birds, for example, than all the other states combined (Morris, 1991). Protecting the habitat of an endangered or threatened species is a critical factor in their preservation. Thus, habitats of endangered or threatened species are environmentally sensitive areas needing protection. An action located in or close to one of these habitats may negatively impact it, thereby significantly reducing the chances of survival of the resident species.

Triggering the EIS system for any action proposed near an endangered or threatened species' habitat could have the effect of enhancing their protection by both calling attention to their existence near the site as well as assuring that mitigation measures, required as part of the EIS, will be addressed.
Improvements in the Geographic Criteria

We carefully considered each of the suggested additions or changes to the geographic criteria and we based our recommendations on our judgement of (1) the environmental sensitivity of the area suggested for inclusion; and (2) the ability to clearly define the area to be included. The first measure of environmental sensitivity is admittedly subjective. Here we relied upon comments we received during the interviews as well as our knowledge of the rationale for creating each of these special areas. The second measure, the ability to clearly define boundaries, is of secondary importance but still necessary when considering criteria based on protecting an identifiable place.

A number of reviewers took issue with our second measure. Their reasoning was that the EIS system should be extended based on the sensitivity of the area not necessarily limited by a lack of specific boundary delineation. Identifying boundaries should be the responsibility of agencies with jurisdiction over sensitive areas. Furthermore, inclusion of sensitive geographic areas as a criteria for requiring an EIS may provide an incentive to better define interim boundaries.

Special Management Areas

We recommend that actions taking place in the SMA be included as a criteria for triggering the EIS process. The SMA requires a different management regime than other lands because it is expressly recognized as an environmentally sensitive area. The SMAs are also well defined throughout the state, thus they meet both our measurements for inclusion.

Valid arguments exist that actions occurring in the SMAs are already covered by existing requirements for environmental documentation. This documentation, however, is not consistent among counties, despite the recognition of the need to protect coastal resources as a common heritage to all the people of the state as exemplified in the federal and state CZM legislation. Furthermore, the inconsistency in environmental evaluation between counties creates confusion in the development process that seeks to use these resources. Protection of the SMAs as important statewide resources merits the formalized documentation as provided by the state EIS system. The EIS does more than list probable impacts, it calls for a justification for the use of irreplaceable resources, and an examination of mitigative measures to reduce the effects of negative impacts.

Several county officials objected to the inclusion of the SMAs on the grounds that they already require environmental documentation that is in some cases more stringent than what is required by chapter 343 HRS. We have no doubt that this is the case with many projects proposed in sensitive areas within each of the counties. However, the EIS law is sufficiently flexible to include county concerns in the content of the EA or EIS. The scoping process allows county officials to dictate what topics should be addressed in those documents. The EIS system is designed to be an information gathering and disclosure process that should apply to all actions requiring environmental documentation. If the information generated by the EIS system does not fully address county concerns, county officials should note this shortfall during the review of prepared documents and may require additional information as they deem necessary.

If the SMAs were included as a trigger for the EIS system it would make the shoreline criterion redundant. That criterion could then be dropped as a trigger. Inclusion of the SMAs as an applicability criterion might create the situation where an action takes place both in a conservation district and the SMA. Thus, the action would be subject to two separate criteria, and permits administered by two separate agencies. Section 343-5(d) addresses this situation. In the case where an applicant seeks a permit from two separate agencies for the same action, the OEQC determines which agency will be responsible for the EIS process.

Wetlands

Our recommendations for inclusion of wetlands is similar to our recommendations for endangered and threatened species. There may be wetlands that are found outside the conservation district land classification that are not covered by the EIS system. Wetlands are an important environmental resource and an extremely sensitive one. To the extent that they can be defined geographically by state or federal agencies using a commonly acceptable definition of wetlands, they should be included as a trigger. In this regard, we note that recent agreement on the definition of wetlands has been reached among the U.S. Army Corps of Engineers, the Soil Conservation Service, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service (U.S. Federal Interagency Commission, 1989).
Prime Agricultural Land

Changes in land use boundaries from agriculture to urban or rural requires the approval of the Land Use Commission (LUC), which may include documentation of environmental impacts. However, the documentation may be significantly less than that required by the state EIS system. The public participation in reviewing the documentation is considerably less in the LUC boundary change process than in the EIS process.

Permitted uses within agricultural lands do not require any environmental documentation. Some uses may have significant impact on agricultural lands defined as prime by the state Department of Agriculture (DOA). They are the very lands that the state wished to protect by creating the state land use law. It is reasonable to extend the coverage of the EIS system to prime agricultural land. These are environmentally important areas and their boundaries are delineated on DOA maps. Their inclusion would allow the EIS system to be used to examine the environmental impacts of golf courses, for example, as well as other activities if they were being proposed on prime agriculture lands. A number of bills have been introduced recently in the legislature calling for an extension of the EIS system to actions proposing the development of golf courses.

Marine Life Conservation Districts, Sanctuaries, Special Streams

MLCDs and sanctuaries are already covered under the applicability criterion 2 which extends EIS coverage to proposed actions in the conservation zone. Special streams listed in the draft Hawaii Stream Assessment Study may benefit by coverage under the EIS system but their inclusion is premature at this time. We do not know for example, what type of management regimes if any, will be placed on each of the classes of streams listed in the draft stream assessment. If the use of land near a protected stream will require a permit, or if the permit will require gathering environmental information, then extension of the EIS system to streams would be a logical step in assuring that these special fresh water areas receive adequate attention for proper management. At this juncture, we have insufficient information to make a definitive recommendation with respect to inclusion of streams as a trigger for the EIS system. However, we believe an EA should be prepared for those uses of any Hawaiian stream that already requires approval by the State Commission on Water Resource Management.

Historic and Cultural Sites

We recommend that the applicability criteria for inclusion of sites of historic and cultural importance be broadened. We note that under federal law the EIS system covers not only sites listed on the Federal Register of Historic places but those eligible to be listed. We recommend that an analogous provision be inserted into the Hawaii law, so as to include sites of historic and cultural significance. Sites of historic and cultural significance should be included with the proviso that they be clearly depicted on a map and be proven to be of genuine significance as indicated by their eligibility for inclusion on an inventory undertaken by DLNR, Historic Sites Office or the Office of Hawaiian Affairs. It is clearly the intent of chapter 343 HRS to treat historical sites as important environmental resources.

Historic, Cultural, or Scenic Districts

We do not recommend that historic, cultural, or scenic districts be included as criteria for triggering the EIS system. Decisions to create such districts are made by county governments and may not have statewide significance. Additional requirements for allowable development are normally incorporated as part of the special district. Requiring the preparation of an EA may be beneficial to the preservation of these districts, but we believe that the decision to make that requirement should rest with the county. The county could, if they chose to do so, require the submission of environmental information using the chapter 343 HRS process in much the same way as the City and County of Honolulu requires SMA permit applicants to meet some of those requirements.

Endangered and Threatened Species and Their Habitats

We recommend that endangered or threatened species and their critical habitats listed, or eligible for listing, on the federal and state lists be included as criterion for triggering the EIS process. Both state and federal law recognize the importance of protecting endangered or threatened species. Actions that occur in conservation lands and/or are proposed by state or county agencies must consider the impacts of the action on endangered or threatened
species. However actions proposed by private developers in lands classified as agriculture, rural, or urban that may have a significant impact on endangered or threatened species do not trigger the EIS system. We believe that these actions should trigger the EIS system. The applicability criteria should be based on an action's proximity to the habitat and range of an endangered or threatened species. We note that documentation of habitats and ranges for both plants and birds are not complete for all endangered and threatened species and their habitats. However, documentation does exist in some cases, for example, in recovery plans for endangered bird species and in the Hawaii Heritage program database maintained by the Nature Conservancy and DLNR. Another essential reference source is the Forest Bird Communities of the Hawaiian Islands: Their Dynamics, Ecology and Conservation (Scott, et al., 1986). Documentation of range and habitat mandated by the federal and state acts concerning endangered and threatened species and their habitats will mean that in the future this type of information will be available to State and County planning agencies. We are aware that without adequate documentation, the provision to require an EA for actions impacting endangered or threatened species would be difficult to enforce. In addition, if a permit is not required to undertake an action, then enforcement of the provisions of the EIS system may be hampered. However, these issues can be adequately resolved given existing knowledge and a willingness to develop interim guidelines until documentation becomes available and widely distributed. The urgency of the need for protection precludes delays in implementation.

Discussion: Changes to the Administrative Criteria

Several changes to the administrative criteria were suggested as a result of the interviews and subsequent review comments on the Draft EIS report including: dropping the proviso for excluding general plan amendments introduced by county councils or planning commissions from requirements of an EA; requiring assessments for only those projects that require permits; requiring an assessment for actions which by their nature may be controversial; and requiring an assessment for those actions that propose the introduction of alien or genetically altered species.

County Plan Amendments

In the 1978 EIS report, it was recommended that all actions requiring a general plan amendment be subject to chapter 343. The argument for this recommendation remains valid today. Amendments to county general plans initiated by county councils are excluded from coverage by the EIS system, while those initiated by private developers are subject to coverage. An applicant may avoid the EIS process by finding a sympathetic council person to initiate an amendment to a county general plan. This potential loophole would be closed if the exception were dropped. It is inconsistent to have actions initiated by a county council requiring less environmental documentation than is required for the same action in the same location initiated by a private party.

Permit Only Option

The idea of limiting coverage of the EIS system to those projects which require some type of discretionary permit was examined in the 1978 EIS report. The rationale for this suggestion is that without the necessity to apply for some type of permit from an agency, it would be difficult to monitor and enforce compliance of the law. However, if an action is subject to any discretionary state or county permit it would be subject to chapter 343 HRS.

Controversial Actions

In NEPA, there is language that suggests that "controversial actions" (i.e., those that elicit broad public concern and inquiry) are subject to assessment regardless of the presence or absence of other criteria. A provision requiring coverage of the state EIS system for those actions that may be deemed controversial was suggested a number of times during the interviews. The rationale for inclusion of "controversy" as a criterion lies in the assumption that if a community views an action as having a significant effect on the environment, it is far better to get the community involved in the decision making process through the EIS system, than in the courts at some later stage. Inclusion of this criterion would mean expansion of the EIS system to private actions which may not now require a permit. For example, golf courses developed in agriculture lands or private lands cleared for pastures are not subject to chapter 343, but might be if a controversy criterion were added to the law. Defining what would qualify as a "controversy" with respect to chapter HRS 343 HRS would require careful definition however.
Introduced Species

Although stringent controls through screening and quarantine provisions imposed by the Department of Agriculture are applied to deliberate introductions of new plant and animal species to Hawaii, no assessment of possible environmental impacts under Chapter 343 is required. However, whether introduced deliberately or inadvertently, some exotic species have exerted a devastating effect on native Hawaiian species and habitats through predation, competitive exclusion, or displacement by overexploitation of critical resources. In a recent survey of academic and environmental management professionals conducted by the Environmental Center, the depletion of natural habitat and extinction of native species were judged to be the most significant environmental issues facing the State.

Because of a number of factors, including geographic isolation, extended growing season, and diversity of climate, Hawaii recently has become a focal location for the newly burgeoning biotechnology industry. Applications for field testing and release of genetically engineered organisms in Hawaii are increasing rapidly. Because of widespread concern for the integrity of remaining endemic species and habitat viability, there is strong support for some means of reviewing and evaluating potential threats to the environment which might result from such releases. Reflecting this concern, several participants suggested that any proposed biotic introductions to the Hawaiian environment should be included as a trigger for the EIS system.

Improvements to the Administrative Criteria

County Plan Amendments

We do not believe the legislature intended to create the potential for a loophole to the EIS law by exempting those amendments to county plans initiated by county councils. We believe the intention for including this exemption was to take into account yearly reviews of county general plans undertaken by planning authorities and approved by county councils. For this reason we recommend that the last part of this criterion (343-5(a)6 HRS) “or amendments to any existing county general plan initiated by a county” be amended to “or amendments to existing county general plans that are part of a periodic review under county ordinance.”

Permit Only Option

Applicant actions are already tied to existing permit processes sufficiently. We see no way of coupling the EIS system and discretionary permits any more closely than what is already in the law. We do not support the suggestion that coverage of the EIS system should relate solely to discretionary permits. We believe that such a change would lead to an expansion of the EIS system for actions it was not intended to cover. We favor retaining a rationale of environmental protection as the basis of the EIS system application.

Controversial Actions

The addition of a controversy criterion for triggering the EIS system is an intriguing idea. Each year several large scale actions that do not fall under the applicability criteria of section 343-5 have very significant impacts, yet they are not covered by the EIS system. Golf courses in agricultural lands are one type of action that is often cited as being controversial, but other examples including logging on privately owned lands, or clearing range lands. Both of these examples are permitted uses of agricultural lands which may not be subject to chapter 343 but may have significant impacts.

We do not recommend the inclusion of a controversy criterion as an administrative criteria for triggering the EIS system. Most controversial projects would be covered by an administratively clearer extension of the EIS system to geographic areas, for example, by extending EIS coverage to prime agricultural lands.

The amount of controversy an action engenders may be better suited as a yardstick to determine whether identified impacts of an action are significant. This idea will be discussed in a later section of this chapter.
Introduced Species

We recommend that a new administrative criterion be added to the applicability section to require an EA for actions that propose the introduction of new species including genetically altered organisms. Despite the number of actions which may be produced by this extension of the EIS system, introduced species have the potential for inflicting significant impacts on Hawaii’s flora and fauna. In point of fact, if significant changes were not anticipated, there would be no point in carrying out the introductions. While negative impacts have been more often recognized by the media, there have been a number of very beneficial introductions in Hawaii. However, the point of the EIS system is to disclose information about proposed actions so that a better informed decision can be made. In the case of introduced species, much information is already gathered and considered by agencies prior to decision making. What is missing is the opportunity for public review and comment on the documents justifying the introduction. If the justification is sound it should pass public scrutiny. If the number of actions becomes a rationale for not preparing an EA, then perhaps several or many similar introductions may be covered by a single program EIS.

Proposed Provision for County Option

Counties designate areas of county wide importance with special restrictions for development. The City and County of Honolulu’s special design districts are examples of areas which receive special development controls. Other areas such as Lahaina on Maui and Kailua-Kona on West Hawaii are considered to be important regions within their counties. These areas, because of their location or historical significance, are considered important resources. One of the special development controls could be the extension of the EIS system. It may not be appropriate for the state to extend blanket coverage to the areas. The rationale for creating a special design area may have nothing to do with environmental considerations. Some mechanism should exist, however, to allow counties to extend the coverage of the EIS system to these areas if they deem it advantageous.

One option recommended in the 1978 EIS report (Cox et al.) was to amend the applicability section to authorize the counties to include areas of county wide concern as a criterion for EIS system coverage. This would enable counties to extend the EIS system coverage by county ordinance rather than by amendment to state statute. This would also enable counties to delete these same specially created districts from coverage if it proves unnecessary or unproductive.

While this option is appealing since it would allow counties to retain control over an extension of EIS coverage, it is likely to bring about little or no change. County representatives have expressed little desire to extend coverage of the EIS system to county projects. For example, counties could extend EIS coverage in their SMAs but with the exemption of the City and County of Honolulu. County regulation of the SMAs already requires the disclosure of environmental impacts of proposed development. These impacts could be disclosed by requiring a chapter 343 EA as did the City and County of Honolulu under ordinance 4529. However, none of the other counties have done so, and the City and County has amended its code to make the use of the chapter 343 process discretionary.

Another option would be to leave decisions of applicability to the counties in much the same way as the managements of the SMAs is done under the state CZM act. At least one county planning official favored this option because it would better integrate the counties’ information gathering with their permit decisions. However, as pointed out by the Environmental Center (Hawaii University Environmental Center, 1977) this would unwisely leave to county discretion the requirements for EIS preparation even in the case of actions subject to state permits.

Deletions to Existing Criteria

A number of suggestions for the deletion of existing criteria were discussed. Deletions proposed included the requirement for an EA for proposed actions in the Waikiki Special District, the shoreline setback area, and areas near historic sites, as well as those actions involving heliports.

Waikiki Special District

The Waikiki district is one of the state’s most densely populated urban areas. Some of our participants expressed the opinion that the environment has been distorted so drastically in these areas that further development
cannot have a significant impact. A requirement to conduct EAs in this area is unnecessary and a waste of time, according to the reasoning of these critics.

While undoubtedly the area is urban, Waikiki is an important statewide resource that may be approaching its limits to development. For this reason it seems prudent that each new development be scrutinized closely to determine how many critical factors, such as traffic and aesthetics, will be impacted. Because this area continues to be a focus of development pressures, we recommend that it remain as one of the triggering criteria for HRS 343.

**Shoreline Setbacks**

Shoreline setbacks are contained wholly within the counties' SMAs and are subject to their regulatory regime. The SMAs regulation provide all the environmental protection the shoreline setback needs according to those that favor deletion of the application of HRS 343. However, deletion of this criterion from the state law could lead to an uneven provision of environmental information in a very critical area. The state has legitimate concerns about the shoreline that are protected to a degree by the EIS system. If the SMAs were included as an applicability criterion, then removal of the Shoreline area criterion would make sense. Without this inclusion we recommend against deletion.

**Historic Sites**

Effective remedies for protecting historic sites are contained in chapter 6E HRS. However, we maintain that the uniqueness and irreplaceability of historic treasures and the social importance of cultural sites dictates that extraordinary care be taken in their protection. Furthermore, many of these types of resources may be poorly documented in the traditional scientific literature but the extent and importance of their location and traditions are more likely to be identified during the public review process of the EIS system. Hence, we urge that they not be deleted from the EIS law.

**Heliports**

The removal of criterion 8 (the construction, expansion, or modification of heliports) has received considerable attention from the Environmental Center as well as many participants. The inclusion of heliports as a triggering mechanism was in response to a problem of excessive noise being emitted from helicopters during their operation. The rationale for its inclusion can be summarized as follows:

Tour helicopters tend to fly low in areas that are scenic. This type of flight often causes considerable distress for people and wildlife on the ground. The State Helicopter and Tour Aircraft Advisory Board, in cooperation with various government agencies, has been focusing on the problem. The subject bill, (HB 1583-87) then, is part of a 3-pronged strategy designed to cope with the helicopter noise problem (Perez, 1987).

The problem caused by noise emitted by helicopters over scenic areas occurs throughout the United States especially in areas near state and national parks. Many conservationists as well as casual campers trying to attain the "wilderness experience" have complained bitterly about having that experience ruined by the intrusion of helicopters and small aircraft. The solution to this problem seems to lie in the regulation of aircraft over wilderness areas.

Trying to solve the noise problem by requiring an EA has two drawbacks. First, the EIS process will not ban the building of a heliport. At best, it may reveal information on which a denial of a building permit may be based. At worst, it may be viewed as a method to harass potential heliport developers, something critics of the EIS system have long claimed is an unrecognized purpose of the EIS system, although EIS proponents have been denying this accusation. Second, prior to the addition of helicopters to the triggering categories, applicability of HRS 343 had been based on broad geographic or administrative categories. The inclusion of the heliports as a triggering action has altered this basis by requiring an EA for a specific type of action. This creates the potential for special interest groups to lobby for inclusion of any number of specific actions depending on what is popular or unpopular for the time. We see this as having the ultimate potential of weakening the EIS system. It may make EIS coverage subject to the whims of the day rather than being based on a solid foundation of broad categories which emphasize geographic/administrative concerns rather than specific actions. For these reasons, we recommend that subsection 343-5(8) be deleted.
The Exemption Screen

Introduction

The second screen in the multiple-screening process is the exemption screen. The exemption screen provides a way to eliminate actions from the requirement to prepare an environmental assessment when the action will probably have minimal or no significant effects on the environment. The authority to allow exemptions comes from section 343-6(7) HRS which calls on the Council to:

Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment.

Background

Two changes were made in the original statute concerning exemptions. Chapter 343-6 originally called for the EQC to establish a list of exempt classes of action (section 343-6(6)) and a list of exempt classes of public service actions (section 343-6(7)). Act 197-79 amended the statute by combining the requirement for two separate lists of exempt actions into a single one. The second change was to abolish the EQC and the transfer of its rule making authority, including its administration of the exemption action procedures, to the Council.

Ten categories of exempt classes of actions were created by the EQC in the EIS regulations promulgated in 1975. They included:

1. operations, repairs, or maintenance of existing structures
2. replacement of existing structures
3. construction of single, new small structures, including single-family residences
4. minor alterations to land, water, or vegetation
5. basic data collection
6. administrative activities
7. construction of accessory structures
8. interior alterations
9. demolition of structures with certain exceptions
10. zoning variances, with some exceptions

The regulations were revised by the Council and became part of the Department of Health’s Administrative Rules in 1985. One change was made in the classes of exempt actions in the 1985 revisions. Exempt class 6 (1.33 (a) (6) EIS regulations) concerning actions that were primarily administrative activities was deleted. The definition of “Action” was amended in the 1985 revision to specifically exclude administrative activities as an action, thus obviating the need to retain a separate exempt class for these activities.

The rules require that each agency submit to the Council a list of actions that the agency believes fall into one of the exempt classes. Agency exemption lists and proposed amendments to existing lists must be submitted to the Council and require their approval before they can be implemented.

Discussion: Exemption Issues

Issues Raised by the Environmental Center

The 1978 EIS report found fault with both the classes of exemptions and agency lists submitted. It noted that “the EQC has actually designed several of these classes in such a way as to include certain types of actions that will generally have significant environmental impacts and hence should not be exempt.” One of the regulations cited as an example of a class too broadly defined was section 1.33a 1: “Operations, repairs, or maintenance of existing
structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.” The rationale was that:

“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.” (Cox et al., 1978, page 51)

Examples cited included reconstruction of shoreline structures where they have been shown to adversely affect the coastal resources. These prior structures that are to be replaced may have been erected in the past without adequate recognition of the optimum designs that avoid causing long term impacts to adjacent properties. This exempt class, however, was not changed and remains today as one of the nine exempt classes. Several examples of exempt types of actions that agencies proposed were cited by the Environmental Center as being too broadly defined. One in particular that was proposed by the State Department of Transportation (DOT) requested an exemption from assessment under HRS 343 for beach sand replenishment actions. This exemption was judged to be inappropriate by the Environmental Center. In the first place, beach sand replenishment would not be undertaken unless a “significant effect” improvement was anticipated. Furthermore, the source of sand and the quality of that source relative to the beach to be replenished are extremely important to the successful completion of the project. Impacts to the environment at the site of the source may be as significant to consider as impacts to the receiving shore. The Center had this to say about the proposed exemption:

“No sand replenishment program should be undertaken at any beach without assessment of the environmental impact of the program. The exemption is inappropriate.” (Cox et al., 1978, page 53)

The Council denied the request. This particular example has added significance because it was recently proposed in October 1990 by the State DOT for inclusion as an exemption. The Environmental Center once again objected to the exemption as being defined too broadly (Harrison, 1990).

Issues Raised by Interview Participants

The consensus of those interviewed reflected little concern with exemptions. Only a few issues were mentioned and there were no problems cited dealing with actual exempt actions listed by agencies or the classes of exempt actions developed by the Council. Two concerns that were expressed by interview participants dealt mostly with administrative matters: first, the lack of a master list of exemptions; and second, the infrequency of review by agencies, or the Council, of existing exemption lists.

Other Concerns

Two other concerns, cited rarely by the participants but raised by the authors, are the lack of specifics under which exemptions are ruled to be inapplicable and the lack of record keeping for actions that are found exempt under agency exemption lists. Each of these concerns are discussed in detail below.

Exemption Master List

According to the EIS rules (section 11-200-8 (d)) “Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes of actions…” These actions will be judged exempt, because they will have minimal or no significant effect on the environment. These lists are approved individually, for each agency, by the Council after discussion at a meeting open to the public. There has been no attempt to relate exemptions to existing lists or to list all the actions considered exempt in one master list. Most agencies have little idea of what other agencies consider exempt. Agencies exchange little or no information concerning what types of actions are listed. Furthermore, an action considered exempt by one agency may not be considered exempt by another agency with different responsibilities or jurisdiction in more environmentally sensitive areas. Thus, exemption lists are not and should not be uniformly applied. However, each agency’s exemption and its rationale for inclusion could be listed on a single list. This would make periodic review easier and would enhance public access to this important part of the EIS system.
Review of Exemption Lists

Section 11-200-8(d) requires that agency exemption lists be reviewed periodically by the Council. However, no time frame for this review is set aside in the law or rules. In addition, most agencies reported that they have not reviewed their own lists for “several” years. A review of the exemption lists was attempted by the OEQC several years ago according to agency personnel interviewed, but no documentation of the review or its results were available.

Inapplicability of Exemptions

Section 11-200-8(2) contains two conditions under which exemptions are considered 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.” However, no process is outlined that requires agencies to determine whether either of these two conditions exists. Furthermore, there is no public notification requirement for either the lists of exempt actions of individual agencies that have been approved by the Council or the specific actions undertaken by the various agencies that they have considered exempt. From time to time, lists of proposed exemptions or amendments to existing lists, have been published in the Bulletin at the discretion of its staff. However, there is no statutory or regulatory requirement for such publication. As for lists of specific actions that have been determined to be exempt from Chapter 343 HRS by the agency, these lists are not easily available to the public. With no public notification of exemption decisions and very little recordkeeping of exemptions of individual actions, it is difficult to see how agency compliance of these little known exceptions to the exemption provision can be monitored.

Maintaining Records of Exempt Actions

One of the issues discussed in the summary report (Appendix A) dealt with reporting exempt actions. It was suggested “it may also be appropriate to require agencies to file a list of activities which they have determined fall within their exempt actions, with the Council or OEQC. In this way the Council or OEQC may monitor the use of exemptions to safeguard against the possibility of abuse.” Keeping records of exempt decisions is mandated by section 11-200-8(5) which states, “Each agency shall maintain records of actions which it has found to be exempt from Chapter 343, Hawaii Revised Statutes.” Section 11-200-2 of the EIS rules defines the term “exemption notice” to mean “... a brief notice filed by the proposing agency, in the case of a public action, or the agency with the power of approval, in the case of a private action, when it has determined that the proposed project is an exempt or emergency project.” This indicates that it was the intent of the Council to have agencies not only keep records of actions they considered exempt but that a notice must also be filed. However, there is no explanation of what should be contained in the notice or with which agency it should be filed. One reviewer suggested that the creation of exemption notices was a misnomer and that it really refers to the record of exempt decision called for in section 11-200-8(e). We are not sure that this is the case, but if the Council had intended that exemption notices should be filed, it should have indicated more clearly the contents and requirements in the exemption section of the rules. If it is the intent of the Council to require record keeping only, then based on interviews with state and county agencies, it is being overwhelmingly ignored. Most departments reported that they do not keep records of the judgements that an individual activity is exempt from chapter 343 HRS. A number of agency officials claimed there were too many activities that they considered exempt to record them all. If our interpretation of this section is correct, then a number of agencies may be in violation of the EIS rules.

Improvements to the Exemption Provisions

Recordkeeping and Exemption Inapplicability

Requiring agencies to maintain a record of actions considered exempt is not only a requirement of the EIS rules, it is also an essential component of the EIS system’s management process. If no records are kept of actions that are considered exempt, then there is no way to monitor for compliance with either of the two conditions that render exemptions inapplicable (11-200-8(b)): cumulative impacts and sensitive environments. What is missing is the enforcement of this provision. We recommend that the OEQC be designated, in the rules, to monitor for agency
compliance of recordkeeping requirements. Each agency should maintain a record of actions they have deemed to be exempt. Notices of exempt decisions should be forwarded to OEQC within 30 days of their determination and be made available to the public on request, or published in the Bulletin. The notice may be brief, containing only a description and location of the project and the reason why it is considered exempt. OEQC should be given the authority to request an agency to review its exempt decision for the following reasons: (1) the action is not on the agency exempt list or does not fall within the 9 categories, and (2) one more of the conditions rendering an exemption inapplicable is met. OEQC should maintain a list of actions considered exempt which could be made available to the public on request or published periodically in the Bulletin.

Publication and Review of Exemptions

We also recommend that the rules be amended to require annual publication in the Bulletin of exemption lists for each agency; timely publication of any amendments to the lists; and a periodic review of agency exemption lists by the Council. One suggestion was to require a biennial review of agency lists while another was to require review every 10 years. Two years would be too frequent while 10 years may be too long a period. Very few additions have been made to agency exemption lists in the past 10 years (Table 6). We suggest a time period of not less than five years is appropriate.

Table 6. Proposed Additions to Agency Exemption Lists Since 1979

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<td>10/26/90</td>
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* not found in OEQC Bulletin

We suggest that the Council prepare a master list of agency exemptions to allow for easier review of exempt actions. This could be done by the OEQC under existing statutory authority.

A revision of the exemptions should be part of a larger revision of the EIS rules. The rules have not been updated since 1985 and they are no longer consistent with provisions in the statute in several sections. We recommend that the Council immediately undertake a revision of the EIS rules. In the section dealing with exemptions we have recommended several changes which we urge the Council to consider. In addition to these changes we suggest that the Council use the rule revision process to undertake a review of the exempt classes of actions.

A review of the exempt classes of actions will provide a chance to reexamine whether all nine categories are appropriate. Another concern over the classes of exemptions raised during the interviews was that the present exemptions may reinforce bad decisions made in the past by allowing renovation or replacement of existing structures to be exempt from environmental scrutiny, even if they are built in environmentally sensitive areas. By reviewing the classes of exempt actions and the lists of actions submitted by agencies, the Council can begin a reappraisal of this section of the rules.
The Assessment Screen

Introduction

Actions subject to HRS 343 that are not otherwise exempt from further consideration must be assessed to determine the extent of their environmental impacts. The law provides that whenever an agency proposes an action that is not exempt, the "agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required" (section 343-5(b)). Whenever an applicant proposes an action subject to Chapter 343 HRS and not otherwise exempt, the law provides "the agency receiving the request for approval shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required" (section 343-5(c)) HRS. The process of assessing actions to determine whether their impacts are significant constitutes the third and final screen of the multiple screening process.

The final screen, in the multiple screening process, separates those actions that will require an EIS from those that do not. This is the first step in the EIS process that requires gathering information about the environmental impacts of an action. This information is compiled into a document called an Environmental Assessment or EA. The EA is used to make a preliminary estimate of the extent of a particular action's impact on the environment. Those actions that may have a significant effect, based on the EA, will require an EIS. Actions that are deemed not to have a significant affect on the environment will require no further documentation.

Actions requiring an EIS will incur additional costs to prepare the documentation and may experience costs associated with delays in undertaking the action. It is in the interest of private developers, government agencies, and the public who ultimately bear the cost of these actions, to create a screen that will require an EIS for only those actions that will benefit by the additional information gathered. Determining when an EIS is required is a matter of judgement and the exercise of this judgement is often the most difficult task in the EIS system.

Determination Process

For agency actions (section 11-200-9 1.(a) EIS Rules), the agency proposing the action shall make an assessment at the earliest practicable time but prior to adopting a plan of action. The assessment shall:

1. Identify potential impacts
2. Evaluate the potential significance of each impact
3. Provide for detailed study of major impacts
4. Determine the need for a statement

For applicant actions (section 11-200-9 1.(e), the approving agency or agencies from which the applicant must receive a permit to carrying out the action shall assess and determine the need for an EIS. The assessment for the applicant action must address the same four areas as the agency assessment plus an additional area if an EIS is required. If a statement is required, the approving agency or agencies must prescribe the information necessary to assure adequate discussion and disclosure of environmental impacts.

According to the statute, agencies are required to prepare the EA whether an action is proposed by an agency or by an applicant. In practice though, most agencies have accepted information prepared by the applicant in lieu of preparing an assessment in house. A common practice is for an EA to be prepared by private consultants for both agency and applicant actions.

Regardless of who prepares the EA, the proposing or approving agency must make the determination of whether an EIS is required. The agency must file a notice of the determination and 4 copies of the EA with the OEQC. The notice is published in the Bulletin. If the agency determines that an action may have a significant effect on the environment as outlined in section 11-200-12 of the EIS rules, it must file a Preparation Notice (11-200-11 (a)(1)). If the agency determines that an action will not have a significant impact on the environment, it must file a Negative Declaration.

Agencies may publish the contents of their EA and solicit comments from other agencies and the public, but they are not required to do so (11-200-9(c)). Determinations are not subject to review or oversight by OEQC or the
Adequacy of the Assessment Screen

The determination of whether an EIS is required is a key decision point in the EIS process. Those actions receiving a Negative Declaration require no further environmental documentation and may proceed onto the next phase of the regulatory process. Those actions receiving a Preparation Notice must go through additional steps which at a minimum will take approximately 3 months to complete. For this reason, government agencies and private developers consider receiving a Negative Declaration to be beneficial.

The process by which a determination is reached has raised questions about the adequacy of the assessment screen. Critics charge that the present process allows agencies to make determinations on projects they have proposed and applicants to prepare their own EAs on behalf of the approving agency, thus insuring favorable results. There is no provision for review of the assessment determination except through judicial proceedings.

In the past, determinations have been appealed to the Council. However, there is no established procedure for making such an appeal. If a person wished to file an appeal there was no guidance available as to whom he/she should appeal to, or on what grounds and what factors would be considered in the decision. Critics claim the potential for abuse exists. Based on Environmental Center reviews of about 10 percent of the Negative Declarations at the time, the authors of the 1978 EIS study reported that “although most of the determinations made on assessments have been appropriate, misuses of the assessment screen represents a major failure of the EIS system” (Cox et al., 1978, page 61).

An examination of the number of actions which are covered by the EIS system indicates that an overwhelming majority of them are determined to have no significant impact on the environment. From January 1979 through July 1990 there have been 3,100 actions for which a determination was made. Of this total 2,768 actions, or about 89 percent, received a Negative Declaration and 332 actions or about 11 percent received an EIS Preparation Notice (Table 4). On the average, there have been 20 Negative Declarations issued and 2.4 EISs required each month since January 1979.

Case Studies

Since 1979, the Environmental Center has conducted 243 reviews of EAs that have received a Negative Declaration (Table 7). In general, we found that most of the EAs were adequate but could have been improved by including additional information. In a number of cases, the reviewers recommended that an EIS should have been required. The Environmental Center has documented a number of what it considers inappropriate determinations. We will briefly examine two projects where the issuance of a Negative Declaration was considered to be highly inappropriate. The projects are the Marine Cultural Enterprise’s proposal to construct an open drainage ditch at a site in Kāhuku in 1984 and the Kahului Airport Development Plan, in Kahului, Maui in 1989.

Marine Culture Enterprises Drainage Ditch

Marine Culture Enterprises (MCE) was a high technology penaeid shrimp aquaculture facility. It was located in Kāhuku, on the north shore of the island of Oahu, on 45 acres of land approximately 1,500 feet inland of the coast east of Kalaueia point near the site of the abandoned Kāhuku Airstrip. The planned facility consisted of 48,500 square meter growout raceways covered by inflated, polyethylene fabric cover, a seawater pumping facility from six wells located on the property, a shrimp processing and cold storage building, and a 2,530 foot drainage ditch approximately 21 feet wide. The drainage ditch was built to discharge an estimated 33 million gallons a day (mgd) of effluent from the facility to the ocean. Because a portion of the ditch was built through the 40 foot shoreline setback area an EA was required (MCE, 1983). The EA was completed in October 1983 and a Negative Declaration was issued by the Department of Land Utilization (DLU), City and County of Honolulu, December 28, 1983. The Negative Declaration was subsequently listed in the January 8, 1984, Bulletin (vol. 1, no. 1).

In February 1984, the Environmental Center began a review of the EA/Negative Declaration and a Zone of Mixing (ZOM) application for the effluent produced by MCE. The review was completed on March 13, 1984 and
Table 7. Results of Reviews undertaken by the Environmental Center of potentially problematic Environmental Assessments

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<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>OK+INFO</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>8</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>3</td>
<td>10</td>
<td>1</td>
<td>46</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>11</td>
<td>8</td>
<td>2</td>
<td>10</td>
<td>33</td>
<td>27</td>
<td>15</td>
<td>27</td>
<td>28</td>
<td>36</td>
<td>29</td>
<td>243</td>
</tr>
</tbody>
</table>

Key:
- **DLI** = The Document Lacks sufficient information.
- **ND/NS** = The Negative Declaration is not supported by Environmental Assessment or an improper procedure has been taken.
- **Exp.EA** = The Environmental Assessment should be expanded or an EIS should be required.
- **EIS** = An Environmental Impact Statement should be required.
- **SEIS** = A Supplemental Environmental Impact Statement should be required.
- **OK+INFO** = The Environmental Assessment/Negative Declaration is appropriate but additional information has been added.

sent to Shinji Soneda, Department of Health's Environmental Protection Division, for the ZOM application; to Robert Jones, Director of Department of Land Utilization to request a reconsideration of the Negative Declaration; and to James Morrow, Chairman of the Environmental Council to request that the Environmental Council consider taking action to request that an EIS be prepared. The review concluded that based on the amount and make up of the materials in the effluent and the size and characteristics of the receiving waters the "discharge of some 33 mgd of effluent from the Marine Culture Enterprises shrimp rearing facility at Kahuku, Oahu ..., will result in significant impacts to the coastal marine environment at Kahuku" (Hawaii. University, Environmental Center, 1984).

The conclusions reached in the Environmental Center review were contested by MCE and its consultants. A series of responses and rebuttals were exchanged between the Environmental Center, MCE's consultants, and state and county offices involved, between March and May 1984. On May 2, 1984 the Council concluded that the Negative Declaration was inappropriately issued by the DLU and that an EIS should have been required. On May 24, 1984 the DLU responded to the Council by upholding its original decision. Since the final decision rests with the approving agency to make determinations, the DLU decision was final.

Among the reasons cited for upholding its decision on the issuance of a Negative Declaration, DLU cited two as being crucial: (1) that there were no objections voiced by state agencies that reviewed the EA; and (2) most critically, the time frame of the objections that were raised was too long after the announcement of the Negative Declaration. DLU went on to say that it might have been more inclined to reverse its decision had the issues surfaced on a more timely basis.

Kahului Airport Development Plan

The Kahului Airport Development Plan was proposed in 1989 to provide guidance for future expansion and improvement of facilities at Kahului Airport to meet aviation demands to the year 1990. Continual expansion of
tourism facilities on the island of Maui during the past decade has caused existing airport facilities to be overburdened, according to the EA (Hawaii DOT, 1989, page 1.1). The improvements to the airport outlined in the development included: repair to runways and extension of safety area, improvements to roads leading into the airport, and improvements to terminal facilities. The plan lists a total of 24 short-term improvement projects to be carried out under the proposed action.

The DOT filed a Negative Declaration for the Kahului Airport Development Plan with the OEQC, published in the May 23, 1989 Bulletin (vol. 6, no. 10). The Environmental Center reviewed the EA and requested that the DOT reconsider its determination that the action receive a Negative Declaration. The Environmental Center’s review cited failure to adhere to the regulatory requirements of an EA as the general reason why a Negative Declaration was inappropriate for this action (Hawaii, University, Environmental Center, 1989). Chief among the reasons was DOT’s failure to consider this action as a phase of a much larger proposal. Section 11-200-7, of the EIS Rules state: “A group of actions proposed by an agency or an applicant shall be treated as a single action when: “they are ...phases or increments of a larger total undertaking...”, or when, “An individual project is a necessary precedent for a larger project;” The EA states that the short term projects proposed and discussed in the EA document are part of a long term development plan for the airport. The Environmental Center also produced a list of 27 proposed airport development projects for the Kahului Airport dating back to 1976 (Table 8), all of which had received Negative Declarations, to illustrate the long term nature of the airport expansion proposal.

The Sierra Club Legal Defense Fund on behalf of two local citizen groups, Maui Air Traffic Association and Hui Alanui O Makena, filed suit against the DOT on the basis that the EA was inadequate and the Negative Declaration was inappropriate. The case was settled without going to trial when DOT agreed to prepare an EIS covering the planned expansion of the Kahului Airport.

Discussion of Cases

The two cases are not intended to be representative of all EA/Negative Declaration decisions. However, they do point out several problems often cited as leading to abuses. In the case of the MCE drainage ditch, DLU cited two reasons for upholding its decision to file a Negative Declaration: 1) failure of agencies to raise any objections to the findings in the EA, and 2) failure of the objecting parties to proceed in a timely manner. However, both these failures have their roots in the fact that there is no provision for review of the EA once a determination is made.

An agency is directed to consult with “other agencies having jurisdiction or expertise as well as citizen groups and individuals in preparing an environmental assessment” (section 11-200-9 (a) EIS Rules). However, there is no requirement as to which citizens, individuals, and/or agencies must be consulted. Furthermore, there is only a suggestion that agencies publish the contents of their EAs and solicit comments (section 11-200-9 (c) EIS Rules), a suggestion that is rarely implemented. Very few people know that an assessment is being prepared until the Negative Declaration is published in the Bulletin. There is no opportunity to point out problems prior to the publication of the Negative Declaration if an agency is not consulted. Agencies and individuals who may have information contrary to the EA’s findings may not have been contacted during the preparation of the EA and thus have no opportunity to provide their expertise.

After the Negative Declaration is published, acquiring copies of the assessment document, sending them out for review, coordinating the responses, and preparing a reply is a lengthy process. In the MCE case, the Environmental Center sent out copies of the assessment to potential reviewers on February 2, 1984, 25 days after the Negative Declaration notice was published. In those 25 days, the review staff had to receive the Bulletin by mail, note the Negative Declaration notice, call OEQC to receive copies of the assessment, receive the copies, and send them out to appropriate reviewers. There is also no prescribed time frame for review of Negative Declarations thus no guidance as to when “too much” time has passed.

The Kahului Airport improvements case illustrates another problem of the EIS process. Agencies and applicants may seek to avoid the requirement to prepare an EIS by breaking up large projects into smaller components and claiming they will have no significant impacts. The intent of the EIS system is to judge multiphase development as a single project. Among the criteria stated in the EIS rules for judging the environmental significance of an action, is the statement, “is individually limited but cumulatively had considerable effect upon the environment or involves a commitment for larger actions” (section 11-200-12(b)(8) EIS Rules).
Table 8. Negative Declarations issued over a period of 13 years for Improvement and Expansion of the Kahului Airport

<table>
<thead>
<tr>
<th>Improvement and Expansion</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstruction Clearance and Disposal</td>
<td>04/08/76</td>
</tr>
<tr>
<td>Airport Access Road Improvements</td>
<td>05/23/76</td>
</tr>
<tr>
<td>Relocate Outer Marker Facility Instrument Landing System</td>
<td>07/08/76</td>
</tr>
<tr>
<td>Aloha Airlines Holding Room and Other Additions</td>
<td>01/08/77</td>
</tr>
<tr>
<td>Maintenance Baseyard Facilities</td>
<td>04/23/77</td>
</tr>
<tr>
<td>Crash/Fire Rescue Bldg.</td>
<td>04/23/77</td>
</tr>
<tr>
<td>Passenger Terminal Expansion</td>
<td>04/08/78</td>
</tr>
<tr>
<td>Airfield Pavement Strengthening and Related Work</td>
<td>06/08/78</td>
</tr>
<tr>
<td>Alii Jewels, Inc. Sales and Manufacturing Bldg.</td>
<td>09/08/78</td>
</tr>
<tr>
<td>Improvements to General Aviation Facilities</td>
<td>04/08/80</td>
</tr>
<tr>
<td>Kahului Airport Terminal Complex Expansion</td>
<td>09/08/81</td>
</tr>
<tr>
<td>Air Cargo Facilities, East Ramp</td>
<td>03/08/82</td>
</tr>
<tr>
<td>Maintenance of Kalialinui Stream</td>
<td>07/08/82</td>
</tr>
<tr>
<td>Restoration of Kalialinui Gulch and Related Work</td>
<td>08/08/82</td>
</tr>
<tr>
<td>Kalialinui Gulch Improvements</td>
<td>09/08/82</td>
</tr>
<tr>
<td>Periodic Maintenance of Kalialinui Gulch and Stream</td>
<td>12/08/82</td>
</tr>
<tr>
<td>Kahului Airport Expansion-Relocation of Ground Transportation Operators</td>
<td>07/23/83</td>
</tr>
<tr>
<td>Interim Modifications to Existing Terminal</td>
<td>02/08/84</td>
</tr>
<tr>
<td>Improvements to East Ramp</td>
<td>12/23/84</td>
</tr>
<tr>
<td>Construction of Improvements on Lot E-Expansion for Relocation of Ground Transportation Operators</td>
<td>07/23/85</td>
</tr>
<tr>
<td>Runway Safety Area for Runway 2-20</td>
<td>08/23/86</td>
</tr>
<tr>
<td>Alamo Rent-A-Car Baseyard Facilities</td>
<td>10/08/86</td>
</tr>
<tr>
<td>Keolani Place Improvements at Kahului Airport</td>
<td>04/23/88</td>
</tr>
<tr>
<td>Maui Service Facility for Sunshine Hawaii Rent-a-Car Systems, Kahului Airport</td>
<td>02/08/89</td>
</tr>
</tbody>
</table>

In the Kahului Airport improvement case, a number of improvements and expansions had been proposed prior to what was proposed in 1989, and a number of related projects were being proposed to take place sometime in the future. Eventually, the proposed projects, including some of the ones listed in the Negative Declarations, were included in a master plan for the airport that was submitted as an EIS. With no opportunity for review and no mechanism to appeal a determination decision, the matter had to go to judicial review before it could be resolved.

**Discussion: Changes to the Assessment Screen**

Many participants said that the Negative Declaration or Preparation Notice determination was the most problematic part of the EIS system. Though few claimed that extensive abuse exists, most recognized the potential for its existence. Most participants presented some suggestions on how this part of the EIS system might be changed. Four categories of alternatives to the present process were suggested: 1) A review period for EAs; 2) appeals of determinations; 3) OEQC/Council oversight; and 4) third party determinations. Each is discussed in detail below.

**Review Period**

Providing for a review period for EAs was the most frequently suggested change to the way determination decisions are made. Many participants felt that the proposing or approving agency must be given the authority to make determinations, but that other agencies and citizens should have the right to comment on the adequacy of the EA and the appropriateness of the determination decision. A number of people suggested 30 days as an appropriate time period for comments, others suggested 45 days. One participant suggested that agencies make the determination and publish their intent in the Bulletin followed by a 30 day review period to allow dissenters to offer...
an alternate viewpoint. The common element in all the proposed variations was that no determination decision should be final until the review period is completed and all comments received replies.

Appeals of Determinations

Another often suggested remedy was the institution of an administrative appeals process for the determination decision. Several variations of this suggestion were offered, including appeals to the Council or the OEQC, appeals to the agency making the determination, and appeals to a third party such as a professional board or commission set up to hear appeals.

Those that favored an appeal to the Council or OEQC felt that these organizations are the most involved in the EIS process and would be able to respond in the most expeditious manner. Most proponents of this type of appeal felt that both the Council and OEQC would require an increase in staff or re-focus of member competence, above that currently present. Appeals to the Council would be hindered by their infrequent meeting schedule.

Proponents of the appeals to the agency making the determination felt that this idea would be more palatable to agencies since their authority would not be threatened. However, most recognized an inherent conflict in appealing to an agency that has already made its decision.

A few participants felt that a professional board or commission could be formed to hear appeals. The board or commission could be composed of professionals in a number of fields related to environmental issues. The board or commission would review contested Negative Declarations. Suggestions on how such a board would be constituted varied, but in all cases it was concluded that service as a board member would be by appointment and voluntary.

Several reviewers stated that appeals may already be allowed under the Administrative Procedures Act, Chapter 91 HRS, Section 9-9, that outlines the procedure for a contested case hearing. Presumably agencies or interested parties that disagree with another agency’s determination on whether an EIS is required for an action, can request a contested case hearing to have the determination overturned. Each agency must develop its own procedures for requesting and holding contested case hearings. The hearing would apparently be held by the agency which made the determination.

To our knowledge only one contested case hearing has been held dealing with agency determinations. We have only recently learned that a contested case hearing was held by the Maui Planning Commission (see Appendix H). Because this procedure has been used so rarely, we are uncertain as to the exact nature of how it functions in the case of appeals of EA determinations.

It is our understanding that appeals under chapter 91 HRS must be undertaken as a contested case hearing. This can be a costly and time consuming process, not the cooperative approach we envision for an administration appeal process under chapter 343 HRS.

Though the idea of the institution of an administrative appeals process was popular among those who felt this part of the EIS process needed change, it was also an unpopular suggestion for many, even among those who suggested other changes to the Negative Declaration/Preparation Notice determination. The arguments against an administrative appeals process included concerns that it could be used by opponents to delay a decision on an action and it would undermine agencies' authority. Opponents of this proposal also argued that existing provisions for appeal through the courts provided an adequate mechanism to address improperly made determinations.

Environmental Council/OEQC Oversight

A third suggestion was that the Council or the OEQC could be given the authority to override an agency’s determination and require an EIS or Negative Declaration. According to this suggestion, agencies would continue to make determinations but these would be subject to Council or OEQC review. The authority for the Council to review agencies’ determinations may already exist, in a limited capacity, through its power to issue declaratory rulings on determinations made under chapter 343 HRS, if petitioned by an interested person or agency (section 11-201-21(a) Environmental Council Rules of Practice and Procedure). The limitation is that they must be petitioned to review an agency’s determination before the Council can act. The Council’s authority to issue declaratory rulings was questioned by the state Attorney General’s Office and, as a result has been exercised only seven times since 1984, and not at all after 1988 (see Appendix H).
Amending chapter 343 HRS to give the Council or OEQC specific statutory authority to provide oversight of the determination decision would render moot questions on the legality of the use of declaratory rulings to overturn agency determinations. However, empowering the Council and/or OEQC to provide oversight on this part of the EIS process has some problems for both proponents and opponents. Chief among them is the lack of expertise available among Council members and OEQC. Most participants said that the Council and OEQC would require additional technical staff if they were to judge the quality of EAs. In the case of the Council, members would need environmentally relevant specialties before the Council could be judged to be qualified as an oversight body. In the case of OEQC, the ability to hire and retain a qualified staff would depend upon the long term career opportunities offered by the office and the classification of its positions. In addition, some participants felt that the OEQC staff would have to be expanded to handle the task of reviewing determination decisions.

Another problem concerned jurisdiction. Most state and county agencies feel that their personnel have more expertise in the jurisdiction being impacted by a proposed action than any oversight agency or Office, therefore, their determination decisions should not be subject to oversight by another agency.

Third Party Determinations
Several participants proposed that a neutral third party organization could be formed to make the determination decision. This organization’s sole responsibility would be to make the determination decisions based on EAs submitted by agencies. Experts in relevant fields would be chosen to sit on this panel and would meet as often as necessary to make the determination decisions. With the exception that this neutral third party organization would focus solely on one task, this option is similar to the preceding Council or OEQC oversight option and has many of the same problems.

Alternative Dispute Resolution
An excellent suggestion was submitted during the review of the draft which merits careful consideration. The suggestion called for the use of the Alternative Dispute Resolution (ADR) program of the judiciary which is actively being pursued by the state as a means of avoiding litigation. ADR has potential as a means for resolving questions of an agency’s determination of whether an EIS is required for a particular action. The ADR program brings together all parties involved in a dispute and assists the parties in finding a mutually satisfactory solution. It attempts to do this in a non-confrontational manner. Its use in environmental disputes has been limited but not by any of the program criteria.

Improvements to the Assessment Screen

EA Review Period
This part of the EIS process was cited as being the most problematic. The potential for abuse of this third screen in the multiple screening process was recognized even among those not favoring any change. A potentially quicker path to project implementation as provided by the issuance of a Negative Declaration provides an incentive for abuse. Judicial review, the safeguard against abuse, is seldom invoked, because of its cost in terms of time and money. We believe that an alternative to the present process needs to be implemented. Allowing inappropriate Negative Declarations to go unchallenged causes undue skepticism, undermines the entire EIS system, and can lead to costly project delays when significant impacts arise during construction.

We recommend that chapter 343 HRS and the EIS Administrative Rules be amended to institute a 30 day review period for all EAs for which a notice of Negative Declaration is being contemplated. One of the underlying principles of the EIS system is to have the public be involved in the decision making process for actions that may have an impact on the environment. The present process curtails public input for 89 percent of the actions by not providing a mandated review of those EAs that receive Negative Declarations. We believe that line agencies should continue making the determinations based on the EA. That determination should be subject to review by interested parties or agencies in a manner similar to the review of EISs. After making a preliminary determination, an agency should publish it in the Bulletin. Comments on the assessment and the preliminary determination decision should be
accepted for a period of not less than 30 days. Comments received during the review period would have to be
addressed in a final EA along with an explanation of the reasoning for the agency's final determination.

Administrative Appeals

We do not recommend the creation of an administrative appeals process at this time. The use of a 30 day
review period followed if necessary by the ADR or a similar program offers a better avenue to address the problem
of disagreement over agency determination decisions. The contested case hearings contained in section 91-9 HRS
are nearly as complicated as judicial proceedings and do not truly increase the likelihood that determinations would
be appealed. However, if the ADR or similar program proves inadequate to address the perceived problem with the
present determination, then an administrative appeals procedure should be instituted.

We suggest that standing to request any administrative appeals under this process be strictly limited to those
who have commented on the EA. This limit should reduce the number of appeals intended to delay projects because
it would require early disclosure of concerns to the determining agency during the review period. This disclosure
offers the potential for project modification or compromise on issues raised.

The additional time necessary to institute an appeals process could be offset by a shortening of the 60 day
statutory limit found at Section 343-7(b). Since most prudent proposing agencies and applicants that have received
Negative Declarations wait the full 60 days to see if legal action is filed before proceeding with their project, it
would seem logical and fair to reduce that time by the same number of days allowed for the administrative appeal.

Administrative appeals could be made to the Council or some other body formed for this purpose. However,
we feel that the Council membership could be so constituted as to make it the appropriate body to hear appeals. The
Council need not have technical expertise in the issues being appealed as long as they have access to competent
technical support which could be provided by OEQC.

OEQC's role in the determination decision should be limited to reviewing EAs for adequacy and compliance
with applicable statutes and supporting the Council on technical matters. This will leave the staff of OEQC to
concentrate on developing expertise in technical issues while avoiding conflicts with state and county agencies.

Administrative Oversight

An alternate to an administrative appeals process that could be instituted if mediation proves to be
unsatisfactory is to involve an oversight agency. This is not our preferred alternative. We believe that an appeals
process allows those who disagree with an agency's determination to work directly to change that decision.
However, in lieu of an appeals process, we find this alternative acceptable with some conditions. First, the oversight
function should not be exercised by the Council. While this body may be suited to judge appeals it does not have
the expertise to perform a technical review. In its role of an appeals board the Council should rely on the OEQC for
technical assistance. Second, we believe the OEQC should provide oversight for those actions involving state land
or funds or approval from state agencies. The oversight of EA determination for county actions should be assigned
to an agency designated by the county's mayor. This would eliminate disputes that may arise over issues of home
rule and interference with county jurisdiction which may come about if a single state agency is designated as an
oversight authority.

Neutral Third Party

The alternative of having a neutral third party determine all EAs is unworkable. At the average rate of 20
determinations per month such a body would have a large work load. Asking an appointed and uncompensated
body to spend the amount of time that would be necessary to make a careful judgement of these determinations is, in
our view, unreasonable.

Dispute Mediation

To address cases where disagreement over the final determination decision still exists after a review and
response period, we recommend that chapter 343 HRS and the EIS Administrative Rules be amended to require the
use of ADR or other similar program. We note that the non-confrontational setting which the ADR program
achieves often leads to situations where all parties come away satisfied. The use of mediation is much less costly than judicial appeals and much less formal than administrative appeals under chapter 91 HRS or those proposed for chapter 343 HRS.

We suggest that mediation take place within a similar time period as was previously proposed for the EA review period or within 30 days of the publication of the determination in the Bulletin. The ADR or similar program should be used for a trial period of 3 years. If the use of the program proves beneficial during that period than its use could be made permanent. OEQC could be the monitoring agency during the trial period, to determine the participating parties degree of satisfaction with the results.

Changes to the Content of Environmental Assessments

Changes to the form and content of the EA were also considered as part of our review. Several content changes suggested would lead to a more useful EA and a decrease in the criticisms of that document.

The first change we recommend would be to expand the scope of those who are consulted during the preparation of an EA. In general, we have found that the more widely an action is circulated for comment the more likely that major concerns will be identified and mitigated in the early planning stages of the project. OEQC could develop circulation lists (if they have not already done so) and make them available to agencies. Agencies could develop their own lists based on their experience. We also believe that a scoping meeting that brings together projects proponents, opponents and other interested parties might be used during the EA stage of the EIS system particularly if a Negative Declaration is anticipated.

The second change we recommend is to treat all alternatives, including the proposed action, equally in performing the analysis in the EA. At this stage there should not be a single action chosen over all others since an environmentally less damaging alternative may be available. A thorough analysis that discusses the favorable and unfavorable points of each alternative and then chooses one alternative over the other would lead, in our opinion, to a more adequate and comprehensive EA.

Third, we recommend that the EA include an expanded mitigation section. Each EA should recognize that even minor impacts may be mitigated to the betterment of the project as a whole.

These changes can be made to the content requirements of EAs, section 11-200-10 EIS rules without changes in the statute. Taken together with the addition of a review period for EAs receiving a preliminary Negative Declaration would make the final EAs much more useful documents.