PART 7: SUMMARY AND CONCLUSIONS

Introduction

Part 7 summarizes the findings and recommendations made in the first six parts of this report. We have added a section on areas that were not addressed in our report and need further study. Table 10 at the end of this section provides a summary of recommendations presented in the following text.

Summary of Part 1: Introduction

Purposes of the EIS System

The state's Environmental Impact Statement (EIS) system is a process for compiling physical and social environmental information concerning a proposed action so that decision-makers can weigh these factors along with traditional economic considerations when making decisions. The various steps that make up the process require at the very least an expenditure in time and money that ultimately adds cost to a proposed action. The main benefit of the EIS system is to yield better decisions and improve the quality of the physical, natural, and social environment. However, a legitimate concern that policy-makers and to a certain extent developers and the general public have is whether the present system is the best means of collecting and presenting environmental information. Periodic review and evaluation of the EIS system process is a means of addressing that concern. The purpose of this study is to evaluate the information gathering process created by the state's EIS law chapter 343 HRS.

Clientele of the EIS System

The clientele of the EIS system includes the proposers of actions, the decision makers with final approval power and others concerned with the environmental effects of proposed actions, including the environmentally concerned public.

Methodology

Evaluating a program's process lends itself well to qualitative analysis methods, especially those that include interviews with those intuitively familiar with the program (Patton, 1987). Accordingly, we interviewed those we felt were most familiar with the EIS system — agency personnel, consultants, members of public interest groups, and researchers — as the prime method for soliciting information about the Hawaii EIS system. We also augmented this technique with a literature search of pertinent information on EIS systems in general and in the U.S. in particular, and a review of EIS systems required in other states.

Our study took part in four phases:
1. search of state and federal laws pertaining to EIS requirements
2. consultation with a core group of people knowledgeable in the state EIS system and subsequent preparation of a summary of issues of concern and interview questions
3. interviews with EIS users
4. review of comments provided by participants and selected reviewers on a preliminary report of the results of this study

The fourth phase provided us with valuable feedback and many changes were made to the preliminary report in response to the reviewers' comments. While we considered each comment carefully, it was impossible for us to incorporate all of them into our final report. Some comments were conflicting while others required analysis outside the scope of the study. We believe our study will be considered reasonably thorough and the conclusions will prove useful to those in the position to make changes in the EIS system. If this report also stimulates further study and discussion, it will have served in another way to improve our EIS system and environmental awareness.

We have developed three kinds of recommendations or suggestions on the basis of this study. These pertain to:
1. improvements that do not require amendment of the EIS chapter 343 HRS or the D.O.H. Admin. rules 11-200 EIS Rules
2. recommended amendments to chapter 343 HRS and rules that would result in improvements to the system
3. suggestions for changes that might result in improvements

Organization of the Report

During the initial phases of our study, 13 issues were identified and addressed. Our interview participants called attention to two additional issues. The 15 issues were:

1. Management and Placement of the EIS System
2. Findings and Purpose Statement
3. Definitions of Key Terms
5. Applicability of chapter 343 to Public and Private Actions
7. Assessments and Determinations
8. Consultation and Scoping
9. Preparation of EISs
10. Review of Draft EISs
11. Acceptability Determinations
12. Judicial Proceedings
13. Use of Mitigative Measures
14. Treatment of Cumulative Impacts
15. Shelf life of EISs

These 15 issues are discussed in Parts 3 through 6 of this report. Part 3 covered administrative aspects of the EIS system and included issues 1 through 4. Part 4 examined the multiple screening process and included issues 5, 6, and 7. Part 5 dealt with EIS preparation and included issues 8 through 11. Part 6 dealt with issues 12 through 15.

Summary of Part 2: NEPA, The Hawaii State EIS System, and the EIS Systems of Other States

Genesis of EIS Systems

The first EIS system in the U.S. was created by the National Environmental Policy Act (NEPA) of 1969. Section 102C of NEPA called for the preparation of an EIS whenever a federal action was proposed that may have environmental impact. The EIS system under NEPA was the inspiration for the creation of many state mandated environmental review systems.

First Hawaii State EIS System

The first Hawaii EIS was mandated by a Governor's Executive Order in August 1971. It called for the preparation of an EIS when the use of state lands or funds might have a significant effect on the environment.

Present Hawaii State EIS System

The present Hawaii system was passed as Act 246 during the 1974 legislative session and became chapter 343 HRS. As amended, it requires the preparation of an Environmental Assessment (EA) for all actions utilizing state or county lands or funds, and certain private actions which fall into any one of several administrative, geographic or specific action criteria (chapter 343-5 HRS). Unless otherwise exempt, an EIS is required for actions that may have a significant effect, based on the findings of the EA. After it is determined that an EIS is required, a Draft EIS is prepared by the proposer of an action and is submitted for public review. EISs are found acceptable if they meet the
content requirements set out in the EIS administrative rules (11-200 EIS Rules) and satisfactorily respond to all review comments. An acceptable EIS is required before an action may proceed to the next step in the approval process.

Other EIS Systems in Hawaii

Formal EIS systems in Hawaii include not only the State system established under the Environmental Impact Statement Act of 1974, but also a federal system established under the National Environmental Policy Act of 1970 and a system established by the City and County of Honolulu under their Special Management Area (SMA) ordinance.

Comparison of the Hawaii State EIS System with Other State EIS Systems

A comparison of the EIS laws in Hawaii with those in other states was conducted for this study. A summary of the findings is shown in table 3 and elaborated on in Appendix C of this report. One of the key differences between Hawaii’s law and that of several other states is that Hawaii does not provide requirements and procedures for full exploration of alternative actions. We also noted differences in applicability criteria; the preparation and financing of documents; and requirements for public hearings.

Summary of Part 3: Administrative Aspects of the Hawaii State EIS System

Placement of OEQC and the Environmental Council

As designated in chapter 343 HRS, the Office of Environmental Quality Control (OEQC) is currently responsible for the flow of documents through the state EIS system, and the Environmental Council (Council) is responsible for rule making and the creation and deletion of exempt classes of actions. Both OEQC and the Council are attached to the Department of Health for administrative purposes. This attachment has been the subject of considerable discussion since it was instituted in 1980.

Recommendation for Changes in Placement

We recommend that OEQC and the Council be combined into a single organization and be made advisory to the governor. A recently created Department of the Environment should be given the ministerial responsibility to oversee the EIS system and should be required to review EIS system documents. The Council should retain its rule making authority and discretionary authority in the area of exemptions. We believe a Council with an independent staff provided by OEQC could provide valuable input to the environmental management issues that cross departmental lines.

While an independent Council and OEQC merged within the new Department of Environment Protection (DEP) is a viable option, it is not our preference. We conclude that the Council would have more authority to compel cooperation and compliance from other departments if it and OEQC are made advisory to the governor and placed outside the DEP.

Findings and Purpose

Little interest was shown in changes to the findings and purpose section. We considered the addition of phrases linking the EIS to the provision of an individual’s right to a healthy environment as found in the Hawaii State Constitution. We concluded, however, that the addition of a citation to the constituted right would do little to improve the EIS system. Hence, no changes are recommended to the Findings and Purpose section of chapter 343 HRS.
Definitions

Definitions give precise meaning to the terms used in chapter 343 HRS. We examined each of the existing definitions and determined that those referring to "significant effect," and "agency" required some modification. In addition several new terms should be defined, including "cumulative impact", "unimproved real property" and "preparation notice."

Changes in the Definitions Section

Significant Effect

The definition of "significant effect" is critical to the implementation of the Hawaii EIS system. EISs are required only for actions that may have a "significant effect" on the environment. The present definition is found both in the statutes (section 343-2 HRS) and in the Rules (11-200-2) and focuses on the natural and social environment. Because the term is such an important element in the EIS system, we examined its definition in considerable detail and now offer the following recommendations for amendments to its definition.

We recommend that the definition of "significant effect" be amended by the inclusion of wording to require consideration of an action in light of its location. Actions that ordinarily would not have significant impacts may be judged to be significant if they take place in areas where other activities are being considered or undertaken. The wording should note that actions having a significant effect include actions which exceed environmental standards set forth in chapter 342B-N and applicable regulations. An action would be judged to be significant if acceptable limits for pollution are exceeded. Finally, we recommend the inclusion of language in the definition that would include consideration of the effects of an action on the cultural heritage of an area or changes to traditional life styles of an area's residents as indicators of significance.

Agency

The definition of "agency" should be clarified to determine if governmental organizations such as boards or Councils should be included, or should include a reference to a more definitive definition of agency found elsewhere in the revised statute. It is our opinion that in the case where both private applicant lands or monies and state or county lands and/or funds are involved, the proposed project becomes an agency action. A ruling should be made on whether quasi-governmental entities such as the Aloha Tower redevelopment agency would be considered an agency or an applicant for the purpose of conducting an EA, and clarifying language should be added to the rules.

Cumulative Impact

Defining cumulative impact may help agencies and applicants focus on these issues in the EIS. We suggest that the wording used in the NEPA regulation (40 CFR 1508.27) be considered for use in a definition of cumulative impacts in the state EIS statute and rules.

Unimproved Land

An automatic exemption from preparing an EA under HRS 343 is given in the case of state or county funds to be used for the purchase of unimproved lands (section 343-5(1) HRS). However, no definition of unimproved land is provided. For example, would even a small structure, of no monetary value, change the designation of unimproved to improved? "Unimproved land" needs to be defined, but may be more appropriately defined by an opinion rendered by the State Attorney General (AG) Office. An AG's opinion would provide a common definition for use by both state and county agencies and would avoid development of separate, and possibly conflicting, definitions.

Preparation Notice

We recommend that a definition of "Preparation Notice" be included in chapter 343-2 HRS since its counterpart, the Negative Declaration, is defined.
Notification Provision

Public awareness of EIS related matters is provided by the publication of the semimonthly OEQC Bulletin (Bulletin). We believe that public notice should be improved by requiring OEQC and proposers to increase their efforts to improve public notification of impending actions. The Council is given authority (chapter 343-6(8)) to make rules that prescribe procedures for informing the public about decisions and documents generated by the EIS process. No limitations are set as to what should be required.

Changes to Public Notification Provision

We recommend that the Council require the OEQC to develop a system for routinely routing information to interested state, county, and federal agencies, public interest groups, and representatives of the affected communities. The Council should also require proposers to follow the notification strategy adopted by OEQC.

We suggest that a two-tiered system of information requirements be developed by the OEQC. Actions of major importance or of a potentially controversial nature should require maximum public notification including newspaper advertising, radio and television public service announcements, and mailing of information to communities in affected areas. Actions of a minor nature may have less stringent public notification requirements. Defining major and minor actions may be problematic. However, other determinations of major and minor actions based on judgement are required in the EIS process and in other laws such as the State Coastal Zone Management Act (205A HRS).

Summary of Part 4: The Multiple Screening Process

The process by which actions go through successive levels of scrutiny is referred to as the multiple screening process. The purpose of the multiple screening process is to separate those projects that have little or no environmental impacts from those that may have significant environmental impacts and would therefore require the preparation of an EIS.

Applicability

The applicability screen is the first one in the multiple screening process. It determines whether an action is subject to chapter 343 HRS. There are eight criteria listed in section 343-5 HRS which determine generally what actions are subject to EIS system requirements. We divided applicability criteria into three categories: geographic, administrative, and specific action criteria.

Geographic Criteria

Actions proposed for environmentally sensitive areas are subject to EIS system requirements if they meet one of the geographic criteria. These criteria are found in section 343-5 HRS and include actions proposing the use of:

1. conservation lands
2. The Waikiki area
3. historic sites
4. shoreline areas

Administrative Criteria

Administrative criteria are those that include actions that trigger consideration by the EIS system because they fall under certain governmental jurisdictions. These are actions that:

1. utilize state or county lands or funds
2. propose changing lands from conservation to any other classification
3. propose changes in county plans under certain conditions
Specific Action Criteria

Actions that because of their nature trigger consideration of the EIS system fall in the third category called specific action criteria. There is at present only one action that falls within this category: the proposed development of heliports under certain conditions.

Improvements to Geographic Criteria

Special Management Areas

The Special Management Area (SMA) is a strip of coastal land that extends a minimum of 300 yards inland of the shoreline. We recommend that the SMA be included as an applicability criteria for triggering the EIS system. The rationale for creating the SMA was to protect an environmentally sensitive area. The submission of environmental information is required for receiving a permit to develop in this area. The EIS is a process for gathering and presenting environmental information. We find it a logical extension of the EIS to include actions in the SMA.

Prime Agricultural Land

One of the rationales for instituting Hawaii's land use classification system was the protection of prime agricultural land. Because of their potential for agriculture productivity, these lands are considered to be an important environmental resource. We recommend inclusion of a criteria that would require coverage under chapter 343 HRS for actions proposing the use of prime agricultural lands for uses other than agriculture, as designated by the State Department of Agriculture.

Historic and Cultural Sites

Historic sites trigger the EIS system if they are listed on the Federal and State Register of Historic Places. We recommend that coverage by the EIS system be extended to those historic sites that may be eligible for inclusion on either list. In addition, we recommend that coverage be extended to sites of historic and cultural significance provided that they are clearly depicted on maps and included in recognized inventories.

Endangered and Threatened Species and Their Habitats

Both federal and state governments provide for the protection of endangered and threatened species and their habitats, recognizing them as an important environmental resource. We recommend that actions proposed near an endangered and threatened species and their habitats be included as a criteria for triggering the EIS system. Plants and animals added to the federal and state endangered and threatened species and their habitats list include descriptions of their habitat. Other standard references may be used to determine the range of those not already delineated.

Wetlands

Wetlands are an important environmental resource. We recommend that action occurring in or adjacent to a wetland area trigger the EIS system.

Streams

Certain streams in the State are recognized as having unique, important, or special characteristics. Some were identified in the Draft Hawaii Stream Assessment report. We recommend that actions requiring approval from the State Commission on Water Resource Management should trigger coverage of the EIS system. Extension of the EIS system to other streams should await the final outcome of the Hawaii Stream Assessment study.
Shoreline Setback

If SMAs are included as an applicability criteria, we recommend the deletion of the shoreline setback to avoid redundancy.

Marine Life Conservation Districts and Marine Sanctuaries

There are marine areas that have unique environmental characteristics deemed worth preserving. These areas lie within the conservation district. Actions taking place in these areas already trigger the EIS system.

Historic, Cultural, and Scenic Districts

These are areas where counties may impose additional development guidelines in order to protect some unique historic cultural or scenic feature. We do not recommend inclusion of these districts because they are county designations and may not be of statewide importance. They are not necessarily designated for environmental reasons.

Improvements to Administrative Criteria

Amendments to County General Plans

Criterion 6 (chapter 343-5 HRS) states that an EA shall be required for actions which:

...propose any amendments to the existing county general plans where such an amendment would result in designations other than agricultural, conservation, or preservation, except actions proposing any new county general plan initiated by a county.

A loophole exists in the present law that permits the avoidance of the EIS process by administrative maneuvering. If a county council member submits an amendment to a county general plan on behalf of a private developer, the amendment will not be subject to EIS system review. We recommend the deletion of the exemption of EIS system requirements for county initiated general plan amendments with the exception of county initiated changes which are part of mandated county reviews.

Permit Only Criteria

We examined, but do not recommend, the option of expanding the EIS system coverage to all projects which require some type of discretionary permit. At present, most if not all actions subject to chapter 343 HRS require some type of discretionary permit. We note that there are other actions that require discretionary permits that may not have environmental relevance. To require an EA for these actions would be an unnecessary expansion of the EIS system.

Controversial Actions

We considered the addition of a criteria for triggering the EIS system for controversial actions. We do not recommend this addition because we believe that potential controversial actions will be covered by expansion of the EIS system in other areas and that controversy is better addressed as a determinant of significant effect.

Changes to Specific Action Criteria

At present the only specific action criteria that triggers an EA is the proposed development of heliports.

Heliports

Trying to solve the helicopter noise problem by requiring an EA or EIS 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 of harassing potential heliport developers. Secondly,
the inclusion of heliports as a triggering action has altered the previous geographic or administrative basis for triggering mechanisms by requiring an EA for a specific type of action. It creates the potential for special interest groups to lobby for inclusion of any number of specific actions. We recommend that this eighth criterion be deleted from subsection 343-5(8) because of its potential for weakening the system by providing the first category not based on broad geographic or administrative triggers.

**Exemptions**

The exemption screen, the second in the multiple-screening process, allows actions that will have minimal or no significant environmental effects to bypass the preparation of an EA. We found general agreement that exemptions are a necessary part of the EIS system. However, several issues discussed dealt with the review and update of exemption lists, reporting, and record keeping of exempt actions.

**Review of Exemption Lists**

We recommend that the Council amend the EIS rules to require annual publication of agency exemption lists and publication of amendments to exemption lists in the Bulletin. We also recommend that the Council amend the rules to require a review of all agency exemption lists at least every five years.

We suggest that the Council prepare a master list of exemptions to facilitate their review. We also suggest that the Council review each of the nine classes of exemptions as part of an update of the EIS rules.

**Recordkeeping**

The rules require that each agency maintain a record of the individual actions it has exempted. The rules suggest, though not clearly, that a notice of exempt action must be forwarded to the Council. We suggest that the Council clear the ambiguities in the EIS rules over the requirement to file a notice of exemption. This could be done by either deleting the reference to the notice in the definitions section of the rules (11-200-EIS Rules) or by clarifying the process for submitting the notices in the exemption section of the rules (11-200-8 EIS Rules). We also suggest that the Council amend the rules to designate OEQC as the monitor for compliance of exemption recordkeeping.

**Assessment**

Actions subject to chapter 343 HRS that are not otherwise exempt from further consideration must be assessed to determine the extent of their environmental impacts. Environmental Assessments must be prepared by agencies for projects they initiate and for applicant projects for which they are the approving agency (HRS 343-5(b) and (c)). Actions that may have significant environmental effects, as determined by the agency with the responsibility to prepare the EA, require the preparation of an EIS. Actions determined to have minimal or no significant effects to the environment require no other EIS system documentation. Determinations are published in the bimonthly OEQC Bulletin. Actions that have minimal impact are listed as Negative Declarations. Actions requiring an EIS are listed as Preparation Notices. Determinations are not reviewable except by the courts.

**Improvements to Assessment Determinations**

We recommend that section 343-5(b)-(c) and applicable EIS rules be amended to institute a 30 day review period for EAs for which a Negative Declaration is anticipated prior to making the final determination.

The underlying principle of the EIS system is to allow for public review of environmental decision making. However, there is no public review in 89 percent of the cases where the EA for an action receives a Negative Declaration. A review period required for Negative Declarations will help eliminate suspicion that some determinations may be incorrect. This issue was mentioned by many of our participants as a problem with this part of the EIS system.
Dispute Mediation

We recommend that chapter 343 HRS and the EIS rules be amended to require the use of the Alternative Dispute Resolution program (ADR) or other similar mediation program to address cases where disagreement remains after the final determination has been made. The use of mediation is much less formal and less costly than judicial appeals or the contested case hearings provided for in Administrative Procedures Act chapter 91 HRS. We suggest that the chosen dispute mediation program be used for a trial period of three years. If the use of the program proves beneficial during that period, its use could be made permanent. OEQC could be the monitoring agency during the trial period and could be charged with the responsibility of evaluating the degree of satisfaction with the results through discussions with the parties involved.

Administrative Appeals

We do not recommend the creation of an administrative appeals process at this time. However, if dispute resolution does not prove adequate to address perceived problems with the present determination process, we would recommend the institution of administrative appeals. In which case appeals should be limited to those who have commented on the EA. This proviso should reduce the number of frivolous or dilatory appeals. The additional time allotted to the administrative appeals could be offset by shortening to 30 days the 60 day statute of limitations for bringing judicial action as found in section 343-7(b) HRS.

OEQC Oversight Role

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 allow OEQC to concentrate on developing expertise while avoiding conflicts with state and county agencies.

However, as a less preferred alternative, should the review period and administrative appeals be rejected, the OEQC could act as an oversight agency for actions involving state agencies or state approvals. Oversight for EA determinations 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 could occur if a single state agency were the designated oversight authority.

Neutral Third Party

We do not recommend having neutral parties make all EA determinations. At the average rate of 20 determinations per month, such a body would have a large work load. It would be unreasonable to ask an appointed and uncompensated body to spend the amount of time that would be necessary to make careful judgements.

Improvements to Environmental Assessment Content Requirements

We considered several changes to the content requirements of EAs, listed in section 11-200-10 EIS Rules. We recommend expanding the range of those consulted during the preparation of an EA. We have found that the more widely an EA is circulated for comment, the more likely that major concerns will be identified and mitigated in the early planning stages of the project. OEQC should develop and make circulation lists available to agencies. Agencies could also develop their own lists based on experience. A scoping meeting that brings together project proponents, opponents, and other interested parties might be used during the EA stage of the EIS system.

We recommend that the EIS rules be amended to require that the proposed action and all alternatives should be treated equally in the EA. At this stage there should not be a single alternative chosen over all others since careful analysis may indicate that one alternative to the proposed project is more environmentally sound than another. A thorough analysis discussing positive and negative points of each alternative and subsequent choice of best alternative would lead to more comprehensive and informative EAs and EISs.

We suggest that the mitigation section included in EAs provide information that addresses even minor impacts and recognizes that these may be mitigated to the betterment of the project.
Summary of Part 5: EIS Preparation

Actions subject to environmental assessment that may have a significant effect on the environment require the preparation of an EIS. The process of preparing the EIS is divided into four steps:

1. defining the range of topics that need to be addressed
2. preparing a Draft EIS based on issues defined during a 30 day consultation period
3. public review of the Draft EIS as prescribed in the statute and rules
4. preparation of the Final EIS

Acceptance of the Final EIS is carried out by the governor or mayor for state or county agency actions, or by the approving agency for applicant actions. The accepted EIS is listed in the Bulletin.

The Consultation Process

Impacts on physical and social environmental features differ depending on the type of action proposed and the nature of the physical and social setting. Deciding which impacts must be discussed in the EIS requires a determination of which impacts will be major and which will be minor. The process of determining which impacts will be major and minor is called scoping. In the state EIS system scoping is completed primarily during a 30 day consultation period.

After it is determined that an action may have a significant impact, an EIS Preparation Notice is listed in the Bulletin to indicate that an EIS will be prepared. Interested parties may ask to receive a copy of the EA and provide suggestions for issues to be covered in the EIS during a 30 day period following the publication of the Preparation Notice. Substantive comments must receive a reply and the issues they raised must be discussed in the EIS.

Improvements to the Consultation Process

We examined the issues and practices carried out during the consultation process: whether there should be a scoping meeting held during the consultation process, whether the time period should be changed; and whether scoping should be held prior to the preparation of an EA. We also discussed the need for inclusion of a reference to the consultation process in the EIS statutes and the existing language in the rules that allows agencies to waive the consultation process.

Optional Scoping Meeting

Our major recommendation is that the Council amend the EIS rules to include a section outlining an optional scoping meeting to be held prior to EIS preparation. The scoping meeting would be instituted at the discretion of the proposer. It would provide a forum for dialogue among agencies, interested citizens, and the proposer that may not exist in the present system. We recommend that the option for the submission of written comments be maintained.

Scoping Prior to EA

Although we do not recommend instituting a formal process, we encourage more consultation in the preparation of an EA. We believe that our recommendation for a 30 day review period for all EAs for which a notice of Negative Declaration is being contemplated would also help improve the consultation undertaken during the preparation of the EA. We believe that it would be in the best interest of EA preparers to consult widely so that most issues are addressed during the preparation stage rather than during the proposed 30 day review period.

Change in Time Period

We recommend keeping the consultation period at 30 days.
Statutory Reference to the Consultation Process

There is no reference in chapter 343 HRS to a consultation process. This omission may tempt some to challenge its creation in the rules. We believe that the consultation process is a useful and necessary part of the EIS system. We recommend that section 343-5(a) and 343-5(b) HRS be amended to include reference to a consultation process in the EIS statute. We also recommend that section 343-6(a)8 HRS be amended to give the Council statutory authority to define the consultation period in the rules.

Waiver of Consultation Process

The present EIS Rules (11-200-15(a)) grant the approving agencies or accepting authorities the option of waiving the consultation process when actions involve only minor environmental concerns. The use of the waiver is contradictory to the reason for EIS preparation. EISs are only prepared for actions that may have significant environmental concerns. Thus, there can be no EIS that has solely minor environmental concerns. We recommend the deletion of this waiver option from the rules.

EIS Preparation

The responsibility for preparing the EIS in the Hawaii state system rests with the proposer of the action, i.e., the proposing agency for agency actions and the applicant for private actions. Many have questioned the wisdom of allowing a project proponent to prepare the EIS, claiming the resulting document may be biased. We examined several proposed alternatives including improvements to the present method, making preparation an agency responsibility, designating a neutral third party preparer, and licensing preparers.

Improvements in EIS Preparation Responsibility

We recommend no change in the responsibility for EIS preparation. However, we believe more could be done to improve the quality of EISs.

Better Review

The most direct means of improving EIS quality is to ensure that each document receives a thorough review from all relevant government agencies as well as the general public. We suggest the OEQC and the Council encourage agencies to participate in the EIS review. OEQC should recommend to the governor that each state agency should have a budget and personnel responsible for this function. Although allocating funds and people to accomplish this task may be difficult, it will be an important step in insuring the integrity of the EIS system.

The present statute and rules do not require OEQC to participate in the review of EIS documents. We recommend that this duty be added to either chapter 343 HRS or chapter 341 HRS.

OEQC should become a more integral part of the review process. The staff could review EIS documents and flag issues to be reviewed by line agencies. They could coordinate responses of several agencies on a single EIS.

Guidebook Preparation

A guidebook to preparing EISs should be compiled or coordinated by the Council or OEQC. The guidebook should contain a detailed set of guidelines for EA and EIS preparation. A guidebook should provide:

1. detailed explanations and examples of the EIS statute and rules
2. reasons why particular steps are required
3. roles that lead and review agencies and citizen groups play in the process
4. explanations and examples of important concepts such as significant effects and mitigation

Increased Educational Opportunities

We suggest that OEQC take the lead in providing educational opportunities for state and county agency personnel and interested community members. EIS workshops, seminars, and other training opportunities should be
designed to train agency personnel and should be made available to interested members of the general public so that they can gain a better understanding of the EIS process. The training effort should also expose agency personnel to NEPA and its regulations. State and county agencies are often required to prepare documents that must meet both state and federal EIS requirements.

Post EA/EIS Audits

Post EA or EIS audits or studies of the predictive capacities of past EAs or EISs are a valuable tool for improving their quality. We recommend that OEQC undertake such studies as part of their annual program.

Licensing

Licensing is not recommended as a requirement for EIS preparers, but certification through some professional organization may provide a way of self-policing the EIS consulting profession.

Agency

We do not believe that shifting the responsibility of the EIS preparation for private actions to agencies would be an improvement over the existing process. The most crucial information would still be obtained from the proposers. We found that in other states that require agency responsibility for EIS preparation, those agencies are allowed to use information gathered by the proposer.

Neutral Third Party Preparation

We can think of no way to objectively establish a neutral third party. We do not recommend this alternative.

EIS Review Period

Section 343-5(b) and (c) HRS provide for a 45 day review period for Draft EISs. During this time, interested parties may obtain a copy of the Draft EIS and comment on its contents. The agency or applicant preparing the EIS must respond to all comments received during this period before the Draft EIS can be finalized. Our major concern was with the time period for review and inconsistencies between the time period listed in the statute and in the rules.

Improvements to the Review Period

We recommend no change in the length of the review period. Since the 45 day review period is presently the same for both the state and NEPA EIS systems, preparation of joint documents is facilitated. However, in cases where EISs are large and technically complex we recommend that a provision be added to the statute to allow an extension to the review period. The extension could be granted at the discretion of the proposing agency or approving authority for private actions after receiving a written request from any reviewer. We suggest that the extension be limited to 15 days. This period could be revised later if it is found to be inadequate.

Review Period Inconsistencies

EIS rules dealing with the review period for the Draft EIS do not conform to the EIS statutes. The potential for confusion is illustrated in the different time periods for review of Draft EISs listed in the two documents. The rules (section 11-200-22(a)) still call for a 30 day review period and a 14 day response period while the statute (343-5(b) and (c) HRS) allows a 45 day review period with no time limit on the response. We recommend that the Council move quickly to update the rules to reflect statutory changes.

Acceptance Process

The acceptance determination is the final step in the EIS process and provides the point from which the implementation or permit process may proceed. This determination is made by the governor or his designee for actions that propose the use of state lands, or funds, or by the mayor for actions that propose the use of county lands
or funds, or by the approving agency for applicant actions. The determination that an EIS is acceptable is considered to be final. Though acceptance is precedent for implementation of an action, it does not signal approval of the project.

**Improvements to the EIS Acceptance Process**

Our concerns with the acceptance of a Final EIS focused on the institution of a review period for the final EIS prior to its acceptance; a review of the institution of an administrative appeal; and EIS acceptance vs. project approval.

**Review of Final EIS**

The determination to accept a Final EIS is a subjective judgement with which there may be disagreement. At this stage, however, disagreement is normally limited to the response to review comments. These disagreements can be addressed during a review period set aside to allow reviewers to receive responses to their comments. We suggest that this period be similar to that found in NEPA's requirements. We recommend that a review period of thirty days be established for the Final EIS. The final review period would give Draft EIS reviewers the opportunity to judge if their comments were adequately addressed. If unresolved issues remain, they could be resolved within that time period. If an issue cannot be satisfactorily resolved, then the matter could be referred to the Council. If all comments receive satisfactory responses by the end of the 30 day period, the EIS would be considered accepted.

**Administrative Appeals**

A review of the Final EIS comments and responses would address many of the same problems that would otherwise be subject to an administrative appeal. We do not recommend the institution of administration appeals at this time.

**EIS Acceptance vs. Project Approval**

EIS acceptance should be a technical issue. Introduction of the chief executives of the state and counties to participation in the acceptance determination blurs the distinction between EIS acceptance and project approval. We recommend that section 343-5(b) be amended to allow agencies to accept EISs for agency as well as applicant actions. The governor or mayor would have responsibility for project approval.

**Summary of Part 6: Other Relevant Issues**

In part 6, we considered four issues:

1. limitations of actions
2. cumulative impacts
3. mitigative measures
4. EIS shelf life.

**Limitation of Actions**

The EIS statute sets limitations on three types of legal actions that may be brought by aggrieved parties for actions subject to the EIS law. Judicial proceedings must be initiated within 120 days for lack of assessment required under section 343-5 HRS for a proposed action; 60 days for appeals concerning determinations on whether or not EISs are required; and, 60 days regarding acceptance of an EIS.

**Improvements to the Limitation of Actions**

No changes are recommended to the 120 day limit for appeals regarding the lack of an assessment.

We recommend that the 60 day limitation for judicial appeals pertaining to determinations as to whether or not EISs will be required and the 60 day limitations on acceptance of Final EISs be changed if an administrative appeals
process is instituted. We recommend that the limit for judicial appeals be changed to 30 days in the case where a 30 day administrative appeal process is allowed. Providing 30 days for judicial proceedings regarding determination decisions would be sufficient since the information required for a judicial appeal would likely be similar to that used in the administrative appeal.

**Mitigative Measures**

Mitigative measures are a required portion of both EISs and EAs (section 11-200-17(m) and 11-200-10(7) EIS Rules. Many of the mitigative measures listed in EAs and EISs are required by statutes, regulations, or ordinances. All mitigative measures outlined in the documents need to be realistic and usable. The discussion of mitigative measures should be frank, open, realistic, and have some provision for implementation.

**Recommendations for the Use of Mitigative Measures**

In the case of agency actions the agency should adopt the mitigative measures identified in its EAs and/or EISs. If this is not done, the environment, the public interest, and the project suffer. In the case of applicant actions, the applicant should be required by statute to present a mitigation plan including method(s), duration, and monitoring of proposed mitigative measures and procedures to deal with possible failures. This mitigation plan should be submitted to an agency for approval and subject to citizen review during the permit process. The requirement to file a mitigation plan after the completion of the EIS process should force the discussion of mitigative measures to focus on the more realistic methods and assure that mitigation is at least attempted.

**Cumulative Impact**

The subject of cumulative impacts is one of the most poorly defined areas in the EIS system. EIS rules require that specific reference to projects related to the proposed action be included in the EIS for purposes of examining the possible overall cumulative impacts (section 11-200-17(g) EIS Rules). The intent of this requirement is to encourage proposers to examine how their action, along with other existing or planned actions in a region, will impact the environment. It is difficult to determine at what point cumulative impacts are going to become important, (i.e., reach a threshold) and how they should be measured. No guidelines exist in the statute or in the rules to assist those who may be trying to determine whether or not cumulative impacts are going to be significant.

**Definition of Cumulative Impact**

The terms “cumulative” and “region” need to be defined in the statute and the EIS rules. The definition of “cumulative” could be similar to that found in NEPA regulations and should be considered in reference to an action’s effect on existing state or county plans or zoning for the area. The definition of a “region” should include reference to some acceptable planning division such as a neighborhood, watershed, town, judicial district, county, or island.

**Time Limit on EIS Acceptability**

After an EIS is accepted, it is assumed that implementation will take place on a timely basis but in some cases this does not happen. Several years can lapse between the acceptance of the document and the implementation of the project. Because of the changes that can occur in a community over a period of time, issues addressed in the EIS may also change, especially those regarding cumulative impacts. How much time can lapse before it is necessary to update an EIS prior to proceeding with the project? The present system provides no limit.

**Suggested Time Limits for EIS Acceptability**

We suggest that language be added to the EIS rules governing the preparation of supplemental statements (section 11-200-26 EIS Rules) in order to require the accepting authority or approving agency to examine EISs that are more than 5 years old if substantive implementation of the project has not yet been initiated, and to make a determination whether a supplemental statement is required. The criteria for this determination would be the same as is presently provided in the EIS Rules (section 11-200-26).
### Table 10. Summary of Proposed Improvements to the EIS System

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation or Suggestion</th>
<th>Pertaining to</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(R) or Suggest (S)</td>
<td>EIS Act (A) or Rule (R)</td>
<td></td>
</tr>
<tr>
<td>A. Administrative Aspects of the EIS System</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R</td>
<td>A,R</td>
<td>An independent organization or board will have time and expertise to focus on environmental issues and authority to compel cooperation and compliance from other departments.</td>
</tr>
<tr>
<td>2.</td>
<td>R</td>
<td>A,R</td>
<td>All aspects of significant effects need to be taken into consideration. These concepts are not clear in the present definitions.</td>
</tr>
<tr>
<td>B. Definitions (section 343-2 HRS and section 200-2 EIS rules)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R</td>
<td>A,R</td>
<td>When preparing an EA, it must be clear whether these agencies are considered applicants or agencies.</td>
</tr>
<tr>
<td>2.</td>
<td>R</td>
<td>A,R</td>
<td>Clarify whether councils, boards, or quasi-governmental entities are considered to be agencies under the present definition.</td>
</tr>
<tr>
<td>3.</td>
<td>R</td>
<td>S,R</td>
<td>Facilitates use of an important concept by agencies.</td>
</tr>
<tr>
<td>4.</td>
<td>R</td>
<td>A,R</td>
<td>The word “region” will be an important part of the definition of “cumulative impact”.</td>
</tr>
<tr>
<td>5.</td>
<td>R</td>
<td>A,R</td>
<td>No definition is provided in HRS 343. An EA is not required for actions which propose the use of state or county funds for acquisition of unimproved real property [section 343-5(1)]. However, an EA will be required for actions which involve other triggers under section 343-5 and which occur on unimproved lands.</td>
</tr>
<tr>
<td>No.</td>
<td>Suggestion (S)</td>
<td>Recommendation or Suggestion</td>
<td>Rationale</td>
</tr>
<tr>
<td>-----</td>
<td>----------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5.</td>
<td>S</td>
<td>Request an Attorney General’s opinion on the definition of “unimproved land.”</td>
<td>Provides definition that would be acceptable statewide.</td>
</tr>
<tr>
<td>6.</td>
<td>R A,R</td>
<td>Add the definition of “preparation notice”.</td>
<td>Preparation Notice is not defined in the statute.</td>
</tr>
<tr>
<td>C.</td>
<td></td>
<td>Require OEQC and project proposers to increase public notification efforts. Major or controversial actions should require maximum public notification.</td>
<td>Provision of additional notice above that now required in the statutes would encourage more public participation. Awareness of projects will be increased.</td>
</tr>
<tr>
<td>1.</td>
<td>R A,R</td>
<td>The Council should develop a system for routinely routing information to interested state, county and federal agencies.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>R A,R</td>
<td>The Council should develop a system for routinely routing information to interested state, county and federal agencies.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D.</td>
<td>Multiple Screening Process: Applicability Criteria</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R A,R</td>
<td>Actions taking place in SMAs should be included as a criterion for triggering the EIS system.</td>
<td>SMAs are environmentally sensitive areas, but do not necessarily require the preparation of an EA.</td>
</tr>
<tr>
<td>2.</td>
<td>R A,R</td>
<td>Actions other than agricultural taking place in land classified as prime agricultural land should be included as a criterion for triggering the EIS system.</td>
<td>Potential productivity of these lands make them an important environmental resource.</td>
</tr>
<tr>
<td>3.</td>
<td>R A,R</td>
<td>EIS coverage of historic sites should be modified to include those eligible to be listed on either the State or Federal Register.</td>
<td>Sites determined eligible should enjoy same coverage as those already included in the state or federal lists.</td>
</tr>
<tr>
<td></td>
<td>R A,R</td>
<td>Coverage should be extended to sites of historic and cultural significance provided they can be clearly depicted on maps or listed in standard inventories.</td>
<td>Logical extension of historical site protection.</td>
</tr>
<tr>
<td>4.</td>
<td>R A,R</td>
<td>Actions taking place in areas near threatened and endangered species and their habitats should be included as a criterion for the EIS system.</td>
<td>Threatened and endangered species and their habitats are recognized to be an important but extremely sensitive environmental resource.</td>
</tr>
<tr>
<td>5.</td>
<td>R A,R</td>
<td>Actions occurring in or near wetland areas should be included in the criteria for triggering the EIS system.</td>
<td>Wetlands are important environmental resources.</td>
</tr>
<tr>
<td>6.</td>
<td>R A,R</td>
<td>Actions requiring approval from the State Commission on Water Management should trigger the EIS system.</td>
<td>Certain Hawaii streams have unique, important, or special characteristics.</td>
</tr>
</tbody>
</table>
Table 10. Summary of Proposed Improvements to the EIS System (Continued)

<table>
<thead>
<tr>
<th>No.</th>
<th>Administrative Criteria: County General Plans</th>
<th>Specific Action Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td><strong>R</strong></td>
<td>Delete the exemption of county generated general plans from the requirements to prepare an EA, unless the plans are part of an annual review.</td>
</tr>
<tr>
<td>8</td>
<td><strong>R</strong></td>
<td>Delete the requirement to prepare a heliport EIS.</td>
</tr>
</tbody>
</table>

**E. Multiple Screening Process: Exemptions**

1. **R** | **R** | Council should amend EIS rules to require annual publication of agency exemption lists and publication of amendments to exemption lists. |
2. **R** | **R** | Council should amend the rules to require a review of all agency exemption lists at least every five years. |
3. **S** | **R** | The Council should prepare an exemption master list. |
4. **S** | **R** | Update of EIS rules could include a review of each of the nine classes of exemptions. |
5. **S** | **R** | The Council needs to clarify how and where exemptions are to be recorded. Either delete the reference to a notice in the definition section of 11-200 EIS Rules or clarify the process for submitting the notices in the exemption section of rules (11-200-8). |
6. **S** | **R** | The Council could amend the rules to designate OEQC as the monitor for compliance with exemption record keeping. |

**F. Multiple Screening Process: Assessment**

1. **R** | **A,R** | Section 343-5(b) and (c) should be amended to require a 30 day review period for EAs for which a Negative Declaration is anticipated. |
2. **R** | **A,R** | Chapter 343 HRS should be amended to require the use of an alternative dispute resolution process when disagreement occurs after a determination has been made. |
3. **S** | **R** | A trial period of three years could be set aside to try the chosen alternative dispute resolution program. |
4. **S** | **R** | OEQC could monitor the dispute resolution program. |

**Rationale**

Private developers can request county members to submit amendments to a county general plan and the amendment will not be subject to EIS system review. Specific action should not be used as criterion to trigger the EIS system. Potential will exist to include other controversial projects as automatic triggers. Public awareness is a necessary part of monitoring exempt projects. This will strengthen the system by increasing agency and Council awareness of exemptions. This would allow for easy review of all exempt actions. Current technical knowledge needs to be a basis for exemptions. Ambiguity exists in present form of the rules (11-200 EIS Rules). The present system is not carefully monitored. Although one of the underlying principles of the EIS system is to allow for public review, no public review period for Neg Decs exists in the present EIS system. This method would facilitate finding solutions to disputes that arise over EA determinations. This method is still relatively new and will require monitoring and revision to adapt it to Hawaii’s needs. Records of the new program’s successes and difficulties need to be made so as to have a basis for making a decision to retain or reject it after the trial period.
### Table 10. Summary of Proposed Improvements to the EIS System (Continued)

<table>
<thead>
<tr>
<th>Recommendation (R) or Suggestion (S)</th>
<th>Pertaining to EIS Act (A) or Rule (R)</th>
<th>Recommendation or Suggestion</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>R, A,R</td>
<td>If the dispute resolution program does not work, an administrative appeals process should be instituted.</td>
<td>If dispute resolution proves unworkable an administrative appeals process could be instituted to settle disputes arising over EA determinations. This will reduce frivolous or dilatory appeals. This would keep the total period for bringing judicial proceedings for disagreement over EA determinations to 60 days. This group already has discretionary authority in some EIS matters.</td>
</tr>
<tr>
<td>4.</td>
<td>S, A,R</td>
<td>Limit standing to appeal to those who have commented on the EA. The 60 day statute of limitations in 343-7(b) should be reduced to 30 days if an appeals process is instituted.</td>
<td>This will allow OEQC to concentrate on developing expertise while avoiding conflict with state and county agencies. This would eliminate disputes that may arise over issues of home rule and interference with county jurisdiction.</td>
</tr>
<tr>
<td>5.</td>
<td>S, A,R</td>
<td>Administrative appeals could be made to the Council.</td>
<td></td>
</tr>
<tr>
<td>G. OEQC’s Role in EA Review</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R, A,R</td>
<td>OEQC’s role in EAs should be limited to reviewing their adequacy and compliance with applicable statutes and supporting the Council on technical matters.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>R, A,R</td>
<td>If dispute resolution and the appeals option are rejected, OEQC could act as an oversight agency for actions involving agencies or state approvals. Oversight for EA determinations on county actions should be assigned to an agency designated by the county’s mayor.</td>
<td></td>
</tr>
<tr>
<td>H. EA Content Requirements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R, A,R</td>
<td>The proposed action and all alternative actions should receive equal analysis and consideration in the draft EIS.</td>
<td>Examining all alternatives will lead to more environmentally sound project proposals. Proposers will become more aware of all impacts of projects and be forced to examine environmental issues.</td>
</tr>
<tr>
<td>2.</td>
<td>S, A,R</td>
<td>Mitigation sections of EAs should provide information that mitigate even minor impacts.</td>
<td></td>
</tr>
<tr>
<td>I. EIS Preparation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R, R</td>
<td>Council should amend rules to include an optional scoping meeting to be held prior to EA/EIS preparation at the EA/EIS preparer’s discretion.</td>
<td>This would allow an option for expanding the consultation process.</td>
</tr>
<tr>
<td>2.</td>
<td>S, S</td>
<td>A guide book for EA and EIS preparation should be compiled by the Council or OEQC.</td>
<td>This would amplify EIS preparation requirements listed in EIS rules. Quality of EISs will be improved and knowledge of participants will be increased. Provides self policing of the industry to control quality in preparation of EIS documents.</td>
</tr>
<tr>
<td>J. EIS Review</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>R, A,R</td>
<td>OEQC should be required to participate in the review of EIS documents.</td>
<td>Coordination and coverage will be improved, particularly between agencies.</td>
</tr>
<tr>
<td>No.</td>
<td>Suggestion (S)</td>
<td>Recommendation or Suggestion</td>
<td>Rationale</td>
</tr>
<tr>
<td>-----</td>
<td>----------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>2.</td>
<td>S</td>
<td>OEQC and the Council should encourage all agencies to participate in the EIS review process.</td>
<td>Quality of EISs will be improved.</td>
</tr>
<tr>
<td>3.</td>
<td>R A,R</td>
<td>Add an optional provision for extending the review period for EISs dealing with large or very complex actions.</td>
<td>Additional time is needed to review documents for certain projects. Rules in present form are not consistent with the statute.</td>
</tr>
<tr>
<td>4.</td>
<td>R R</td>
<td>EIS rules need to be updated to include a 45 day review period as defined in 343-5(b) and (c).</td>
<td>This will improve quality of documents produced in the future.</td>
</tr>
</tbody>
</table>

K. Post EA/EIS Audit
1. R
OEQC could undertake an annual audit of predictive capacity of EAs or EISs. | Reviewers would have a chance to make sure their comments had been satisfactorily addressed. Gives Council authority to settle only those disputes that cannot be resolved during the review period. |

L. Acceptance Process
1. R A,R
Establish a 30 day period for review of Final EISs. | Requiring chief executives of state and county to participate in the acceptance determination blurs distinction between EIS acceptance and project approval. |
2. S R
Establish a referral process whereby unresolved issues arising from disputes over responses to comments during during the 30 day review period would be referred to the Environmental Council for resolution. | The mitigative measure requirement is an important part of the system, but can do no good if not implemented. Discussion of mitigative measures will be assured. Measures will be more realistic. |
3. R A,R
Delete the governor and mayor as accepting authorities for agency actions. Substitute agency as accepting authority for both agency and applicant actions. |

M. Mitigative Measures
1. R A,R
The agency should adopt mitigative measures identified in EISs for agency actions. |
2. R A,R
Require applicant to come to agreement with agency on mitigation methods, duration, monitoring, and alternatives. This should be submitted in the form of a mitigation plan after the completion of the EIS process. |

N. Time Limit on Acceptability
1. R R
Language regarding shelf life of an EIS should be added to the rules (section 11-200-26) to require the accepting authority or approving agency to examine EISs that are more than five years old. If the project has not been initiated, a determination needs to be made as to whether or not it will require a supplemental EIS. Criteria would be the same as in the present form of the EIS Rules (section 11-200-26). | The environment at the location of the proposed project can change, outdated old EIS information, especially in the case of cumulative impacts. |