STATEMENT TO THE
STATE ETHICS COMMISSION
IN THE MATTER OF
STATE ETHICS COMMISSION DECLARATORY ORDER NO. 87-2

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This statement was prepared by the Environmental Center of the University of Hawaii. The Environmental Center was created according to provisions of HRS Chapter 341-3(b), with functions as defined in Chapter 341-5, including facilitation of University contributions to "problems of determining and maintaining optimum environmental quality." In addition, the Center is called upon to "coordinate education, research, and service efforts of the University related to ecological relationships, natural resources, and environmental quality, with special relation to human needs and social institutions, particularly with regard to the State". It presents statements from those members of the University community most familiar with the duties, responsibilities, and operations of the Environmental Council and the environmental laws of the State of Hawaii. In fact, the very laws and operating rules now under question evolved from contributions of these reviewers and others in the University Community who constitute a preeminent body of knowledge in regard to environmental law, planning, and management. This statement does not represent an institutional position of the University of Hawaii.

State Ethics Commission Declaratory Order No. 87-2 finds that membership on the Environmental Council of individuals who participate in the preparation of environmental assessments and environmental impact statements constitutes a conflict of interest in violation of HRS Chapter 84. The Commission believes that allowing environmental consultants to be members of the Environmental Council would lead to serious questions of ethical improprieties which would undermine public confidence in actions of the Council.
The Environmental Center finds that the Commission's ruling on this matter constitutes an overzealous interpretation of the State Ethics Code which has broad ramifications deleterious to the promulgation of standards of good government, and, thereby, in conflict with the spirit and intent of the State Ethics Code.

The selective exclusion of environmental consultants is discriminatory. It also deprives the state of the advice of those who have the most thorough understanding of the law and the EIS process.

We think the Commission's ruling is based both on legal misperceptions of Chapter 343 and on a lack of familiarity with the actual functioning of the Environmental Council. We will leave the analysis of the legislative history of Chapter 343 and the legal interpretation of particular phrases in the Act to others. Our specific concern will be with the logic and the implications of the Commission's argument.

The Commission argues that a member of the Council has a duty to scrutinize every environmental assessment and impact statement he or she becomes aware of. We think this is an unrealistic expectation of Council members that is not supported by law or Council practice. From this premise, the Commission concludes that Council members cannot ethically participate in EIS preparation, because such work might put them in a position of reviewing their own work.

Applying the Commission's own logic, it might be unethical should a Council member who works in the Visitor Industry participate in a declaratory ruling over an appeal of a negative declaration for requirement of an EIS for improvements to the airport at Kahului. Indeed, the Commission's reasoning would seem to disqualify attorneys from holding legislative office because they could influence enactment of legislation affecting their interests (e.g., tort reform). Under full implementation of this logic, all commissions would be reduced to a meaningless handful of uninformed individuals.

We disagree that the Council's Rules of Practice and Procedure are more lenient than the prohibitions in the State Ethics Code. Our view was apparently shared by the former governor and the State Attorney General's office, both of whom approved the rules as they stand.

Finally, we strongly support Mr. Morrow's recommended ruling presented on pages 7 and 8 of his motion for reconsideration which reiterates existing Council Rules of Procedure that provide for disqualification of members with vested interest in matters before the Council.