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HB 3946 HD 1
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committees on
Judiciary
Consumer Protection and Commerce

Public Hearing - February 26, 1992
6:30 PM, Mabel Smyth Auditorium

By
John T. Harrison, Environmental Center
Jacquelin N. Miller, Environmental Center
Peter J. Rappa, Sea Grant

HB 3946 HD 1 would provide for a thirty-day public review period for environmental assessments prepared pursuant to section 343-5, HRS, would require written responses to public comments, and would reduce from 60 to 30 days the time during which a judicial proceeding concerning the necessity for an EIS may be initiated.

Our statement on this measure does not constitute an institutional position of the University of Hawaii.

Revisions to the original draft of this bill as described on page 2 of Standing Committee Report No. 382-92 directly address concerns we raised in our prior testimony on the bill. However, we would point out that item (3) of the listed changes should read as follows:

- (3) Required the agency or the applicant to respond in writing ...

Upon review of the proposed language, we would suggest the following non-substantive amendments to clarify the intent and to achieve internal consistency:

1. Page 1, line 10; Page 3, line 18. Add the words, "or not" after "to determine whether."

2. Page 1, line 14; Page 3, line 22. Replace the word, "such" with "its"; insert "pursuant to section 343-3" after "which"; delete "in turn."
3. Page 1, line 15; Page 3, line 23. Insert "that a statement is required" after "determination"; delete "for the public's information."

We fully concur with the amended language of this bill. These changes reflect recommendations made in our 1991 study of the Hawaii State EIS System, particularly with regard to the long-standing need for a process of public review of environmental assessments. We note that there is no time interval specified for the response of the agency or the applicant to written comments. This allows the agency full discretion over the degree of effort necessary to respond appropriately to public comments. Should the response be straightforward, this interval can thus be as short as a few days.

A number of other amendments have been proposed this session which attempt to address the EA review issue, including an administration bill which establishes a twenty-day review period and shortens the window for judicial review from sixty to thirty days. The rationale for the administration measure is that the process may be accommodated without adding any time to the present process. We have expressed concerns that,

- 1) twenty days for review is insufficient, and;
- 2) the implicit ten-day interval for agency/applicant response and decisionmaking is insufficient in the event that substantive concerns are voiced during the public review period.

We anticipate that objections will be voiced to a proposed procedural change which adds any time at all to the existing requirements. Unquestionably, there is substantial pressure from the development community to preserve the existing limit on the time necessary for the ministerial and discretionary aspects of the EA/EIS process. The economic argument that developers' costs are unnecessarily inflated by additional time appears to us to be specious. After all, what is the long term cost of a bad decision? One might note the \$6 million cost to the taxpayers for the inadequate assessment of the significance of burial grounds at Honokohua on Maui, or the additional costs incurred to the developers of the Duty Free Shopping Plaza in Waikiki when, after receiving a Negative Determination from the DLU, it was found that dewatering the construction site resulted in structural damage to adjacent buildings. In each of these cases, disclosure and public review pursuant to recommendations of our 1991 EIS system report would have saved time and money.

We emphasize, once again, that the purpose of Chapter 343 is to provide an effective mechanism for information disclosure and public review, thereby allowing for improved decisionmaking. We strongly suggest that the public's interest is better served by providing the time necessary to arrive at the best possible decision than by adhering to an arbitrary time limit which has proven problematic.