

Hawaii's Environmental Impact Statement Law: Procedure and Practice

by Lisa A. Bail
and Lisa W. Munger

The purpose of the Hawaii Environmental Impact Statement ("EIS") Law is "to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations."¹

The requirements of the Hawaii EIS law are found in Chapters 343 and 344 of Hawaii Revised Statutes and Title 11, Chapters 200 and 201 of the Hawaii Administrative Rules, Department of Health. The Office of Environmental Quality Control ("OEQC") administers the Hawaii EIS law and publishes a twice monthly bulletin, *The Environmental Notice*, which contains information regarding proposed actions, the availability of Environmental Assessments ("EAs") and EISs for public review, and agency determinations.² The OEQC also publishes a comprehensive guide regarding its environmental review process entitled *A Guidebook for the Hawaii State Environmental Review Process*.³ The Environmental Council ("Council") is the rulemaking body.⁴

Actions Subject to Hawaii Law

The Hawaii EIS Law applies to certain types of actions. "Action" is defined as "any program or project to be initi-

ated by any agency or applicant."⁵ Section 343-5(a)(1) requires an Environmental Assessment for actions which "propose the use of state or county lands or the use of state or county funds" with limited exceptions.⁶ The use of such lands or funds triggers the majority of actions requiring an Environmental Assessment. Other categories of actions which require an Environmental Assessment are actions which (a) propose any use within the conservation district, the shoreline area, a designated historic site, or the Waikiki Special District, (b) propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, (c) propose any reclassification of land classified as con-

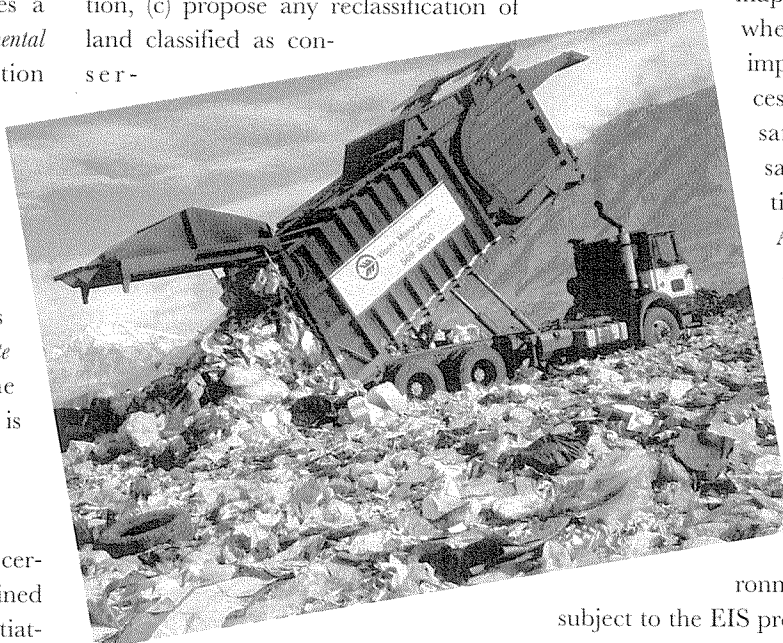
servation district, and (d) propose the construction, expansion or modification of new or existing helicopter facilities which by way of their activities may affect any land in the conservation district, shoreline area or historic site as defined in the statute.⁷ In 2005, the statute was amended to include proposed wastewater treatment units, waste-to-energy facilities, landfills, oil refineries, and power-generating facilities as actions requiring an Environmental Assessment.

Exemptions

Certain classes of actions are generally exempted from the EIS process because they are likely to have minimal or no significant effect on the environment.⁸ The Hawaii Administrative Rules define several exempt categories of actions.⁹ Any agency may request that new exemptions be added to the list, or that existing exemptions be deleted.¹⁰ In addition, each agency may develop its own list of actions which fall within the exemptions.¹¹ These lists must be consistent with the letter and intent of the Hawaii Administrative Rules and Chapter 343, and are to be submitted to the Council for review and concurrence. The Governor also may exempt any affected action or program from compliance with the Hawaii EIS Law in the event that the Governor declares a state of emergency.¹² All exemptions are

inapplicable, however, when the cumulative impact of planned successive actions of the same type, in the same place, over time, is significant.¹³ Additionally, an action which normally has an insignificant impact on the environment may be significant if it is in a particularly sensitive envi-

ronment and therefore subject to the EIS process.




An agency must determine that the action will probably have minimal or no significant effects on the environment when it considers an exemption. Its consideration must include not only the direct site of impact, but also other impacts that are "incident to and a consequence of the primary impact," including secondary impacts.¹⁴

Preparation of the Environmental Assessment

The first step in the EIS process is the preparation of an Environmental Assessment ("EA") to determine whether the proposed action will require the preparation of an EIS. When an agency proposes any action subject to the Hawaii EIS law, the agency prepares an EA at the earliest practicable time to determine whether an EIS is required.¹⁵ When a nonagency applicant proposes an action requiring agency approval, the agency receiving the request for approval is required to prepare the EA based upon information provided by the nonagency applicant.¹⁶

An important step in the preparation of the EA is consultation with agencies having jurisdiction or expertise in the area of the proposed action, as well as consultation with citizen groups and individuals.¹⁷ The applicant provides the agency whatever information the agency deems necessary to facilitate the assessment process.¹⁸ For all agency or applicant actions, the proposing or approving agency must analyze alternatives in the EA.¹⁹

The contents of an EA produced for either an agency or applicant-initiated action are similar. The assessment identifies and sets forth (1) the applicant or proposing agency; (2) the approving agency; (3) the agencies, citizen groups, and individuals consulted in making the assessment; (4) a general description of the action's technical, economic, social, and environmental characteristics; (5) a summary description of the affected environment, including site maps; (6) a summary of impacts and alternatives considered; (7) proposed mitigation measures; (8) the agency's determination or, for draft EAs, an anticipated determi-




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nation; (9) findings and reasons supporting the agency's determination or anticipated determination; (10) agencies to be consulted in the preparation of an EIS, if an EIS is to be prepared; (11) a list of all required permits and approvals; and (12) written comments and responses to comments.²⁰ An EA produced for agency actions must also include an identification of potential environmental impacts, an evaluation of the potential significance of each impact, and provision for the detailed study of significant impacts.²¹

After the Draft EA is complete, it is submitted to the OEQC and notice is published in *The Environmental Notice* bulletin. The public review and comment period runs for thirty days from the date of publication. The applicant or proposing agency must respond in writing to all comments, incorporate comments as appropriate and append all comments and responses to the Final EA. The applicant or agency need not consider or respond to comments not received or postmarked within thirty days of publication by OEQC.²²

Once the Final EA is complete, the agency must then issue either a "finding of no significant impact" determination ("FONSI")²³ or an environmental impact statement preparation notice. An EIS will be required if the agency finds that the proposed action "may have a significant effect on the environment."²⁴ If an EIS is required, the agency prescribes the information necessary in the EIS to ensure adequate discussion and disclosure of environmental impacts.

If the determination is that an EIS is not required, a FONSI is issued by the agency. Publication of a FONSI initiates a thirty-day review and comment period during which that determination may be challenged through litigation.²⁵



If the determination is not challenged within this period, the proposed action may proceed without preparation of an EIS. Very few of all proposed actions subject to the Hawaii EIS Law ultimately result in preparation of an EIS.

Determination of Significance

When deciding whether an EIS is required, the agency must determine whether the proposed action will have a "significant effect" or "significant impact." The agency must consider "the sum of effects on the quality of the environment," and shall evaluate the overall and cumulative effects of the action. The agency must consider every phase of the proposed action, the primary and secondary expected consequences, and the cumulative as well as the short-term and long-term effects of the action.²⁶

In 2000, the Legislature amended the statutory definition of "significant effect" to include any adverse affect on economic welfare, social welfare, or cultural practices of the community and State. In amending the statute, the Legislature found that native Hawaiian culture plays a vital role in preserving and advancing the unique quality of life and aloha spirit in Hawaii, and that the past failure to require native Hawaiian

cultural impact assessments has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture.²⁷ The Environmental Council has adopted guidelines for assessing cultural impacts.²⁸ Cultural impacts differ from other types of impacts assessed in environmental assessments or environmental impact statements. A cultural impact assessment includes information relating to the practices and beliefs of a particular cultural or ethnic group or groups. Such information may be obtained through scoping, community meetings, ethnographic interviews and oral histories. The OEQC publishes a list of cultural assessment providers who may be contracted to perform an assessment of a project's impacts on the culture of Hawaii's people.²⁹

Significance Criteria

In considering the significance of potential environmental effects, agencies are to consider the sum of the effects on the quality of the environment, and are to evaluate the overall and cumulative effects of an action.³⁰ In determining whether an action may have a significant effect on the environment, the agency is

to consider every phase of a proposed action, the expected primary and secondary consequences, and the short-term, long-term, and cumulative effects of the action.³¹ The rules also provide a list of categories in which an action will be determined to have a significant effect on the environment in most instances.³²

Preparation of the Environmental Impact Statement

The EIS is prepared in two stages, initially as a Draft EIS, available for public review and comment for a forty-five day period after publication, and then as a Final EIS submitted to the approving authority or agency. Agencies and applicants must endeavor, through a full and complete consultation process, to develop a fully acceptable EIS prior to filing the Draft EIS with the OEQC, and may not rely solely upon the review process to expose environmental concerns. The proposing agency or applicant may also hold a public scoping meeting to receive comments on the scope of a Draft EIS.³³

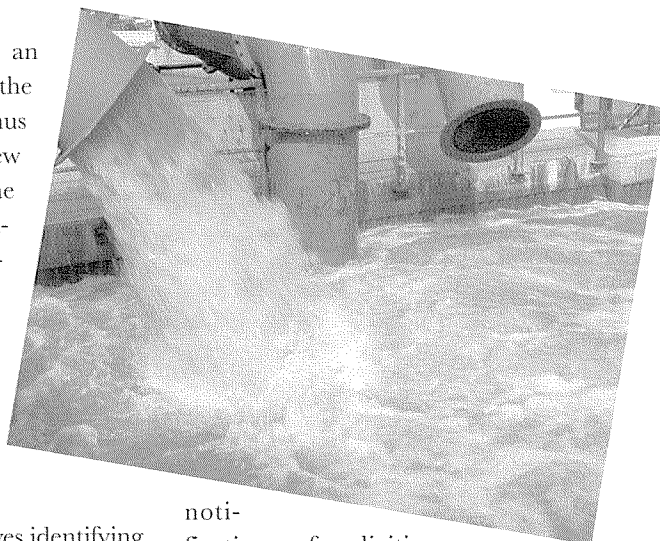
The preparation of a Draft EIS

begins with publication of an EIS Preparation Notice in the *The Environmental Notice*, thus initiating a thirty-day review and comment period.³⁴ The proposing agency or applicant must respond in writing and address all concerns and questions before proceeding with the preparation of the EIS.³⁵ The thirty-day review and comment period may be extended.³⁶

The EIS process involves identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts.³⁷ When preparing an EIS, the proposing agency or applicant must ensure that all appropriate agencies, citizen groups and concerned individuals (as delineated in the rules)³⁸ are consulted. The rules set out the procedures for

notification of, eliciting comments from, and responding to those consulted.³⁹

The EIS contains an explanation of the environmental consequences of the proposed action. Its contents declare the environmental implications of the proposed action and discuss all relevant and feasible consequences of the action. The EIS also must include responsible opposing views, if any, on significant environmental issues raised by the pro-



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positional.⁴⁰

The OEQC has adopted guidelines for assessing various impacts. There are guidelines available for assessing water well development projects,⁴¹ and a shoreline hardening policy and accompanying assessment guidelines.⁴² The OEQC also provides content guidelines for biological surveys, ecosystem impact analysis, and mitigation measures,⁴³ or for sustainable building design.⁴⁴

Draft EIS Content Requirements

The Draft EIS must contain a project description which includes: (1) a detailed map of the site of the proposed action as well as a related regional map, (2) a statement of objectives, (3) a general description of the proposed action's technical, economic, social and environmental characteristics, (4) any use of public funds or lands for the action, (5) the phasing and timing of the action, (6) summary technical data, including diagrams, and (7) an historical perspective.⁴⁵ This information need not be supplied in extensive detail beyond that needed for

evaluation and review of the environmental impact of the proposed action.

The Draft EIS should contain any known alternatives for the action, regardless of cost.⁴⁶ These alternatives must be discussed, and it must be explained why these alternatives were rejected. The alternatives discussed may include the alternative of "no action."

The Draft EIS must contain a description of the environmental setting, including the environment in the vicinity of the action before the proposed action is begun, from both a local and regional perspective.⁴⁷ Special emphasis should be placed on environmental resources that are rare or unique to the region and site, including human-made resources of historic, archaeological, or aesthetic significance. Information about related projects, public or private, existing or planned, must further be included for the purpose of determining cumulative effects. Population and growth characteristics in the region must be identified and discussed. Sources of all data used for the evaluation of environmental con-

sequences must be expressly noted.

The Draft EIS must contain a statement of the relationship of the proposed action to land use plans, policies and controls for the affected area.⁴⁸ Conformance or variance with such plans should be described and discussed. Where a conflict or inconsistency exists, the Draft EIS must contain a description of the extent or reconciliation, and the reason why the applicant has decided to proceed. The Draft EIS also should contain a list of necessary approvals required for the action by government agencies, boards or commissions, and the status of those approvals described.

The Draft EIS must also describe the probable impact of the proposed action on the environment, along with impacts of the natural or human environment on the project. The probable impact statement must consider all phases of the action and all consequences on the environment, including direct and indirect effects. Where related projects exist, the Draft EIS must also include a discussion of the interrelationships



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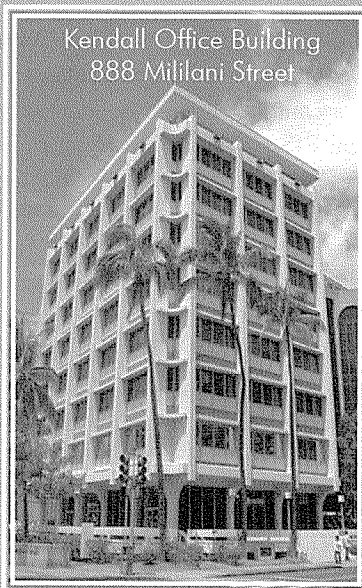
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between the projects and the cumulative environmental impacts. Secondary effects of the project must also be thoroughly addressed, and estimations of any significant population and growth impacts of the project should also be discussed. If the project will cause a direct or indirect source of pollution, all necessary data must be incorporated into the Draft EIS.⁴⁹

The Draft EIS must address the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.⁵⁰ This should include a discussion of such short-term versus long-term trade-offs necessitated by the proposed action and the extent to which the action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety.

The Draft EIS must address all irreversible and irretrievable commitments of resources, including labor and material resources and natural and cultural resources, that would be involved in the proposed action.⁵¹ Unavoidable impacts, the use of nonrenewable resources, any irreversible curtailment of the range of potential uses of the environment, or the possibility of environmental accidents should be discussed in this section. Although commitments of resources must be addressed, the Hawaii Supreme Court has held that the Hawaii EIS Law does not expressly mandate a cost-benefit analysis or quantification in monetary terms.⁵²

The Draft EIS must address all probable adverse environmental effects which cannot be avoided.⁵³ This includes any adverse effects such as water or air pollution, urban congestion, threats to public health or other consequences adverse to the State's established environmental goals and guidelines. This section must include the rationale for proceeding with the action in the face of these unavoidable effects. If part of this rationale is that there are offsetting interests and considerations of governmental policies, then this discussion should include the extent to which alternatives to the proposed action

would meet these same interests without the adverse environmental effects of the proposed plan.

The Draft EIS must consider mitigation measures proposed to minimize the environmental impact of the action.⁵⁴ There should be a description of any mitigation measures in the proposed plan which would reduce significant, unavoidable adverse impacts to insignificant levels. The basis for considering the resultant levels insignificant should be included, along with the rationale for why the proposed mitigation measures were chosen from among alternatives.

The Draft EIS must contain a summary of unresolved issues and either a discussion of how such issues will be resolved before the action is taken, or what overriding reasons there are for proceeding with the action without resolving the problems.⁵⁵

The Draft EIS must identify the person, firm or agency preparing the EIS, as well as contain a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement.⁵⁶ It should also contain reproductions of all substantive comments and responses made during the consultation process, as well as a list of those consulted who had no comment.⁵⁷ Finally, the Draft EIS must also contain (1) a summary sheet describing the proposed action, the impacts, proposed mitigation, alternatives, unresolved issues, compatibility with land use plans and a listing of permits and approvals, (2) a table of contents and (3) a statement of purpose and need for the action.⁵⁸

Final EIS Content Requirements

After the Draft EIS has been through the forty-five day public notice and comment period, a Final EIS is prepared. The Final EIS must include the Draft EIS revised to incorporate substantive comments raised during the consultation process, along with a list of persons, organizations and public agencies commenting on the Draft EIS, and the actual or summarized comments and recommendations received on the Draft

EIS.⁵⁹ The Final EIS must be formatted so that the reader can easily distinguish changes made to the text of the Draft EIS. The Final EIS must also contain the responses of the applicant or proposing agency to significant environmental points raised in the process.⁶⁰

The style of the EIS should convey information in a form easily understood both by lay readers and decision makers.⁶¹ The EIS should be a self contained document with minimal need for cross-reference. Data and analyses may be summarized if less important.

Acceptability

After a proposing agency or non agency applicant has submitted a Draft EIS to the OEQC, the agency or applicant may, but is not required to, request the Council to make a recommendation regarding the acceptability or non-acceptability of the EIS.⁶² If the Council decides to make a recommendation, the Council must take prompt measures to determine the acceptability of an agency's EIS, and in the case of a non agency applicant, the recommendation should be submitted to the applicant within thirty days. The Council's recommendation is published in the *The Environmental Notice*.

Acceptability of a Final EIS is based on whether it fulfills all the procedural and substantive requirements of an EIS, adequately discloses and describes all identifiable environmental impacts, and satisfactorily responds to comments received during the review period.⁶³

Supplemental EIS

If there are any major changes to an action described in an accepted EIS, such as changes in size, scope, location or timing of the action, a Supplemental EIS must be prepared and approved.⁶⁴ The accepting agency determines whether a Supplemental EIS is required.⁶⁵

Proposing agencies or applicants must prepare a Supplemental EIS whenever the proposed action has been modified to the extent that new or different environmental impacts are anticipated. This includes changes in scope, intensity

of impacts, and mitigating measures, as well as new evidence or circumstances which have come to light. Some changes may be made to the action without submission of a Supplemental EIS, so long as the changes will not have a "significant effect," and will not result in individual or cumulative impacts not originally disclosed.⁶⁶

The content requirements of a Supplemental EIS are the same as for the EIS.

Public Participation

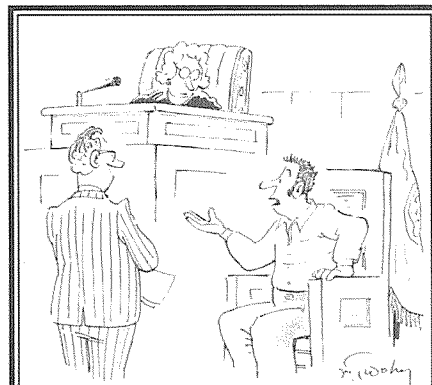
The Hawaii EIS Law allows the public to participate in the EIS process by commenting at various stages of review. An agency solicits comments on an EA from other agencies and the public by publishing the contents of the EA in *The Environmental Notice*.⁶⁷ Any comments received during the thirty day public comment period must be answered in writing.⁶⁸

During the consultation period after publication of an EIS Preparation Notice, members of the public have thirty days to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action.⁶⁹ Written responses must be made to substantive comments during this scoping period.⁷⁰ The Draft EIS must contain these comments.⁷¹

Comments on a Draft EIS are received for forty-five days from the date of notice of availability of the Draft EIS. The proposing agency or applicant must then respond to the written comments from the public.⁷² The response must include a point-by-point discussion of the validity, significance, and relevance of the comments, and a discussion as to how each comment was evaluated and considered in planning the proposed action.⁷³ The comments and responses must be incorporated in or appended to the Final EIS. The public also can participate in the EIS process by litigating agency decisions.⁷⁴

Judicial Review

Judicial review is provided by the Hawaii EIS Law. There is no requirement that administrative remedies be



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exhausted before the initiation of judicial review.

An aggrieved party wishing to bring a judicial challenge based on the lack of a required Environmental Assessment may do so within 120 days of the agency's decision to carry out or approve the action.⁷⁵ A challenge to a determination in an EA that an EIS is required must be brought within sixty days from the date of publication of the final determination in *The Environmental Notice*.⁷⁶ Any challenge to a determination that an EIS is not required must be initiated within thirty days of publication in *The Environmental Notice*. To bring a challenge on the subject of acceptance of a Final EIS, an aggrieved party may appeal within sixty days from the date of notice of the final determination.⁷⁷

The recent litigation involving the Hawaii Superferry has brought to the forefront several issues surrounding EAs and EISs, including standing requirements under Chapter 343. The Hawaii Supreme Court recently issued its decision in *Sierra Club v. Department of Transportation*⁷⁸ which relaxed standing requirements necessary under Hawaii law to bring environmental suits against governmental and private entities.

In *Sierra Club*, the Hawaii Supreme Court held that environmental cases possess a "less rigorous standing requirement."⁷⁹ To determine whether a plaintiff has standing, Hawaii courts employ a three-part standing test, requiring that (1) the plaintiff has suffered an actual or threatened injury; (2) that the injury is fairly traceable to the defendant's actions; and (3) that a favorable decision is likely to provide relief for plaintiff's injury.⁸⁰ With respect to prong one, the Hawaii Supreme Court held that a plaintiff in an environmental case may sue either on the basis of a traditional injury in fact or on the basis of a procedural injury⁸¹ which greatly expands the class of potential plaintiffs as "there is procedural standing for [all] members of the public under [Hawaii's EIS law] because it is a procedural statute that accords procedural rights."⁸²

In order to establish a procedural injury, a plaintiff must show that: (1) the

plaintiff has been accorded a procedural right, which was violated in some way, such as a failure to conduct an EA; (2) the procedural right protects the plaintiff's concrete interests; and (3) the procedural violation threatens the plaintiff's concrete interests, thus affecting the plaintiff "personally," which may be demonstrated by showing a "geographic nexus" to the site in question and that the procedural violation increases the risk of harm to the plaintiff's concrete interests.⁸³

The Court held that concrete interests included concerns about increased traffic, and concerns regarding air and water quality" and that the geographic nexus can be met by any plaintiff which visits a location in which these concerns may materialize.⁸⁴

Upon meeting standing requirements, a plaintiff must show that an EA or EIS should have been prepared or that an EA or EIS is inadequate. The Hawaii Supreme Court has discussed the standard of judicial review which governs the court's determination on appeal of whether an EIS contains sufficient information to satisfy statutory requirements. In *Life of the Land v. Ariyoshi*,⁸⁵ a citizen group sought an injunction halting the construction of the Central Maui Water Transmission System on the ground that the environmental impact statement was inadequate and unacceptable. The court stated:

In making such a determination a court is governed by the "rule of reason," under which an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.⁸⁶

The Court denied the group's request for an injunction, holding that

the citizen group had not demonstrated a strong case for inadequacy and had not pointed out which effects should have been addressed by the EIS.⁸⁷

Conclusion

As *Life of the Land v. Ariyoshi*⁸⁸ illustrates, Hawaii's EIS law is procedural and promotes environmentally informed decisionmaking. An environmental review document must therefore provide sufficient information to enable a decision-maker to consider the environmental factors involved.

1 Haw. Rev. Stat. § 343-1 (Michie 2006). All references to the Hawaii Revised Statutes are made to the printed version of the statutes current through the 2006 legislative session, unless otherwise noted.

2 Haw. Rev. Stat. § 343-3. Copies of *The Environmental Notice* are available on the OEQC website at <http://www.state.hi.us/health/oeqc/notice/index.html> (visited December 1, 2007).

3 Copies of *A Guidebook for the Hawaii State Environmental Review Process* (April 2004) can be obtained by contacting OEQC by telephone at (808) 586-4185 or from the OEQC web page at <http://www.state.hi.us/health/oeqc/index.html> (visited December 1, 2007).

4 Haw. Rev. Stat. § 343-6.

5 Haw. Rev. Stat. § 343-2. "Applicant" is defined as "any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action."

6 Excepted are actions using (a) funds for feasibility or planning studies an agency has not yet approved, and (b) funds to be used for the acquisition of unimproved real property, provided the agency considers environmental factors in any planning or approval process. Haw. Rev. Stat. § 343-5(a)(1).

7 Haw. Rev. Stat. § 343-5(a)(2-8).

8 Haw. Rev. Stat. § 343-6(a)(7).

9 Haw. Admin. Rules § 11-200-8(a).

10 *Id.* § 11-200-8(c).

11 *Id.* § 11-200-8(d).

12 *Id.* § 11-200-8(f). The most recent

declaration of emergency exemption from Hawaii's EIS Law was made by Governor Lingle on October 15, 2006 following earthquakes on the Big Island earlier that day.

13 *Id.* § 11-200-8(b).

14 *Sierra Club v. Department of Transp.*, 115 Hawai'i 299, 341, 67 P.3d 292, 334 (2007).

15 *Id.* § 343-5(b).

16 *Id.* § 343-5(c).

17 Haw. Admin. Rules §§ 11-200-9(a) and (b).

18 *Id.*

19 *Id.* § 11-200-9(c).

20 *Id.* § 11-260-10.

21 Haw. Admin. Rules § 11-200-9(a).

22 *Id.* § 11-200-9.1

23 In 1996, the legislature substituted the term "finding of no significant impact" for the term "negative declaration" in Hawaii's Environmental Impact Statement Law. The term "negative declaration," however, is still used synonymously by the Hawaii Administrative Rules which have not yet been amended to conform to the 1996 legislative changes to the statute.

24 Haw. Rev. Stat. § 343-5(b)-(c).

25 Haw. Rev. Stat. § 343-7.

26 Haw. Admin. R. § 11-200-12.

27 2000 Haw. Sess. Laws 50.

28 State of Hawaii, OEQC, *Guidelines for Assessing Cultural Impacts* (adopted by the Environmental Council, State of Hawaii November 19, 1997). These guidelines are available from the OEQC's website at <http://www.state.hi.us/health/oeqc/index.html> (visited December 1, 2007).

29 State of Hawaii, OEQC, Cultural Assessment Provider List. This list is available from the OEQC's website at <http://www.state.hi.us/health/oeqc/index.html> (visited December 1, 2007).

30 Haw. Admin. Rules § 11-200-12(a).

31 *Id.* § 11-200-12(b).

32 *Id.*

33 *Id.* § 11-200-15(a).

34 Haw. Admin. R. § 11-200-15(b).

35 *Id.* § 11-200-15(d).

36 *Id.* § 11-200-15(b)-(c).

37 Haw. Admin. Rules § 11-200-14.

38 *Id.* § 11-200-15(a).

(Continued on page 18)

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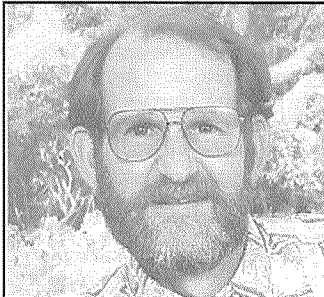
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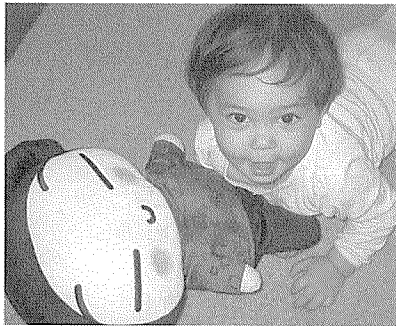
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39 *Id.* § 11-200-15(b)-(d).

40 *Id.* § 11-200-16.

41 State of Hawaii, OEQC, *Guidelines for Assessing Water Well Development Projects* (May 1998). These guidelines may be obtained from the OEQC's website at <http://www.state.hi.us/health/oeqc/index.html> (visited December 1, 2007).

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44 State of Hawaii, OEQC, *Guidelines for Sustainable Building Design in Hawai'i* (adopted by the Environmental Council on October 13, 1999). These guidelines may be obtained from the OEQC's website at <http://www.state.hi.us/health/oeqc/index.html> (visited December 1, 2007).

45 Haw. Admin. Rules § 11-200-17(e).

46 *Id.* § 11-200-17(f).

47 *Id.* § 11-200-17(g).

48 *Id.* § 11-200-17(h).

49 Haw. Admin. R. § 11-200-17(i).

50 *Id.* § 11-200-17(j).

51 *Id.* § 11-200-17(k).

52 *Life of the Land v. Ariyoshi*, 59 Haw. 156, 577 P.2d 1116 (1978).

53 Haw. Admin. Rules § 11-200-17(l).

54 *Id.* § 11-200-17(m).

55 *Id.* § 11-200-17(n).

56 *Id.* § 11-200-17(o).

57 *Id.* § 11-200-17(p).

58 *Id.* § 11-200-17(b)-(d).

59 *Id.* § 11-200-18.

60 *Id.*

61 *Id.* § 11-200-19.

62 *Id.* § 11-200-23(c) and (d).

63 *Id.* § 11-200-23(b).

64 *Id.* § 11-200-26.

65 *Id.* § 11-200-27.

66 *Id.* § 11 200 26.

67 *Id.* § 11-200-9(c).

68 Haw. Rev. Stat. § 343-5(b)-(c).

69 Haw. Admin. Rules § 11-200-15(b).

70 *Id.* § 11-200-15(d).

71 *Id.* § 11-200-17(p).

72 Haw. Rev. Stat. § 343-5(b); Haw. Admin. Rules § 11 200-22(c).

73 Haw. Admin. Rules § 11-200-22(c).

74 See *infra* § 8.2 of this Chapter.

75 Haw. Rev. Stat. § 343-7(a).

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77 *Id.* § 343-7(c); Haw. Admin. Rules § 11-200-24.

78 *Sierra Club v. Department of Transp.*, 115 Hawai'i 299, 167 P.3d 292 (2007).

79 *Id.* at 320.

80 *Id.* at 319.

81 *Id.* at 321.

82 *Id.* at 318.

83 *Id.* at 329.

84 *Id.* at 330-31.

85 59 Haw. 156, 577 P.2d 1116 (1978).

86 *Life of the Land v. Ariyoshi*, 59 Haw. at 164-65, 577 P.2d at 1121, adopting *County of Suffolk v. Secretary of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977), *cert. denied*, 98 S. Ct. 1238 (1978).

87 *Id.*, 59 Haw. at 164, 577 P.2d at 1122.

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Lisa A. Bail and Lisa W. Munger are partners at Goodsill Anderson Quinn & Stifel LLP practicing in the area of environmental law. The authors wish to thank Jonathan E. Shardlow of Goodsill Anderson Quinn & Stifel LLP for his editorial assistance in preparing this article.