

EIS Handbook: A Guide to Hawaii's Requirements and Process



Raymond S. Tabata

UNIHI-SEAGRANT-AB-78-01

December 1977

CIRCULATING COPY
Sea Grant Depository

UNIVERSITY OF HAWAII
SEA GRANT COLLEGE PROGRAM
MARINE ADVISORY PROGRAM

EIS HANDBOOK: A GUIDE TO
HAWAII'S REQUIREMENTS AND PROCESS

by Raymond S. Tabata

Sea Grant Advisory Bulletin
UNIHI-SEAGRANT-AB-78-01

December 1977



This handbook is published under "Marine Advisory Program," a project funded in part by NOAA Office of Sea Grant, Department of Commerce, under Grant No. 04-168-44129, with assistance from the Office of Environmental Quality Control and the Environmental Quality Commission, State of Hawaii. The US Government is authorized to produce and distribute reprints for governmental purposes notwithstanding any copyright notations that may appear hereon.

TABLE OF CONTENTS

INTRODUCTION	1
WHAT'S AN ENVIRONMENTAL IMPACT STATEMENT	1
HAWAII'S EIS LAW	3
WHO MUST WRITE EIS'S?	4
WHEN ARE EIS'S REQUIRED?	5
HOW DO YOU FIND OUT ABOUT NEW EIS'S?	6
HOW TO HELP WRITE AN EIS	8
HOW TO REVIEW AN EIS	9
HOW TO SEND IN YOUR COMMENTS	11
"ACCEPTING" THE EIS	12
THE EIS AND PROJECT APPROVAL	13
THE EIS AND YOU	14
APPENDICES	15
Appendix A. Types of EIS's in Hawaii	16
Appendix B. Agencies to Contact for Information	17

LIST OF FIGURE

Figure	
1	Generalized EIS Process 7

INTRODUCTION

"Environmental impact statement" (EIS) is today a household phrase. EIS's for projects such as H-3, the Reef Runway, and West Oahu College have been subjects of much controversy. For better or for worse, there have been hundreds of EIS's written in Hawaii for projects ranging from housing developments and resorts to public schools and water lines. There are, however, thousands of other projects for which EIS's have not been written; in a few cases, there has been much controversy about whether or not an EIS should have been required.

Despite the fact that EIS's are now fairly well-accepted, there are many people who are not too familiar with

- * Why EIS's are written
- * How EIS's can help citizens and agencies
- * How to use EIS's as a planning tool.

The purpose of this handbook is to explain:

- What are environmental impact statements?
- Who is required to write EIS's?
- What kinds of projects require EIS's?
- When and how can citizens become involved?
- What should you look for in an EIS?
- How do you make your views known?
- How will an EIS be used to make decisions?

WHAT'S AN ENVIRONMENTAL IMPACT STATEMENT?

An environmental impact statement, or EIS, is a written report which describes what may happen to the environment should a project be carried out. For example, an EIS for a new power plant would discuss air and water pollution, effects on marine life, impact on fuel resources, economic and social benefits/costs, and long-range effects on land use in the surrounding area.

In Hawaii, EIS's are written for federal, state, county, and private projects. Although there are

different laws which require EIS's for projects in Hawaii this handbook will focus on the state law-- Act 246 of 1974. Appendix A briefly discusses EIS's required by other laws such as the National Environmental Policy Act of 1969 (also known as NEPA).

THE BIRTH OF EIS'S

EIS's were first conceived by the U.S. Congress in the National Environmental Policy Act of 1969. This law requires federal agencies to prepare EIS's for review by other agencies and the general public. The EIS's must be written for any "major federal action" which may significantly affect the human environment. Since NEPA was adopted, thousands of federal EIS's across the nation have been published. During this period, many states have passed laws requiring EIS's for state, local and private projects.

PURPOSES

What are some purposes for writing EIS's? In general, EIS's help to make sure that environmental concerns are considered in making decisions. For example, an EIS could assist a governmental agency proposing a new road by discussing economic and social benefits as well as possible environmental problems; it would also discuss alternatives and citizen concerns. The information would aid in deciding on whether or not to go ahead with the road or seek an alternative. More importantly, the information would be available to any interested person. In this way, any person wishing to find out more about a proposed project can do so by getting hold of the EIS. By making sure that complete information is available, people responsible for proposed projects will be more likely to make sound decisions; they will also be more accountable for their decisions.

AN EIS IS INTENDED TO BE:

- * An information document which fully discloses environmental impacts and examines alternatives

- * A planning tool for governmental agencies and communities
- * A way to improve the quality of information used in making decisions and evaluating proposals

AN EIS IS NOT INTENDED TO BE:

- * An after-the fact report for a project already approved and ready-to-go
- * A fancy report intended to "justify" a project which will go ahead, no matter what anyone says

HAWAII'S EIS LAW

In 1974, the State Legislature passed Act 246. This Act created Hawaii's EIS law (also referred to as Chapter 343 of the Hawaii Revised Statutes).

Act 246 created an Environmental Quality Commission, or EQC, to establish rules and regulations for EIS's. The EQC has eleven members including the director of the Governor's Office of Environmental Quality Control (OEQC). EQC rules and regulations went into effect in June 1975.

Note: Copies of Chapter 343, H.R.S., and the EQC Rules and Regulations are available upon request from the Environmental Quality Commission (see Appendix B for address).

In general, Act 246 requires EIS's from:

- * State and county agencies, proposing projects
- * Private applicants seeking project approval from state and county agencies

The law does not automatically require EIS's for every proposed project. Instead, agencies must decide whether or not EIS's are required for their projects as well as those proposed by private applicants.

If an EIS is required, there are certain procedures for:

- Preparation of the EIS
- Review of the EIS by the general public and agencies
- Determination of its adequacy

Act 246 also contains important provisions regarding exemptions, appeals, and limits to citizen suits. The rules and regulations adopted by the EQC go into much more detail regarding procedures, definitions, and other requirements. The Commission's "Rules of Practice and Procedure" details how the EQC will conduct its business. The Commission's EIS "Regulations" details how the EIS process is to be carried out under state law.

WHO MUST WRITE EIS'S?

As mentioned earlier, state and county agencies as well as private applicants may be required to prepare EIS's for public review. As a result, there are two general types of projects covered by Hawaii's EIS law:

1. AGENCY ACTIONS--projects proposed by state or county agencies. These usually involve the use of state/county money or land. Most public works projects such as roads, sewers, and public buildings are examples of "agency actions."
2. APPLICANT ACTIONS--projects proposed by any person (other than an agency) such as an individual or private developer and that need approval from some state or county agency. For example, if a private developer proposed a marina in Kaneohe Bay, The Department of Land and Natural Resources could require an EIS before issuing a permit required for projects in the Conservation Land Use District.

As for the actual writing, many agencies and applicants rely upon consultants to prepare the EIS and advise on EIS requirements. In some cases, the same consultant hired to work on project engineering or design also has the EIS responsibility; in other cases, the primary consultant subcontracts someone else to take care of EIS requirements.

WHEN ARE EIS'S REQUIRED?

There are several things to consider when deciding whether or not an EIS is required:

- * Does the state EIS law apply to the proposed action?
- * Is the proposed action exempt?
- * Could the proposed action have a significant environmental effect?

Does the EIS law apply?

The EIS law applies to agency actions if any state/county money or land is to be used for a project. For example, if the State Department of Transportation proposed to build a new roadway with state funds, the EIS law would apply.

For applicant actions, the EIS law applies if the proposed project:

1. Is in the state's conservation district
2. Is in the 20 to 40-foot shoreline setback area (as distinguished from the 100-yard minimum special management area)
3. Is located in certain parts of Waikiki
4. Is located on a listed "historic site"
5. Requires a general plan amendment

Is the proposed action exempt?

Once it is found that the EIS applies to either an agency or applicant action, the next step is see if the action is exempt,

The State Legislature did not intend that every single project in the State would be subject to the EIS law. As a result, exempt classes of action were developed by the Environmental Quality Commission as part of the EIS regulation. In general, minor improvements and alterations are not subject to the detailed procedures called for by the EIS law. For example, the construction of a single-family residence is exempt under normal circumstances.

Will the proposed action have a significant effect upon the environment?

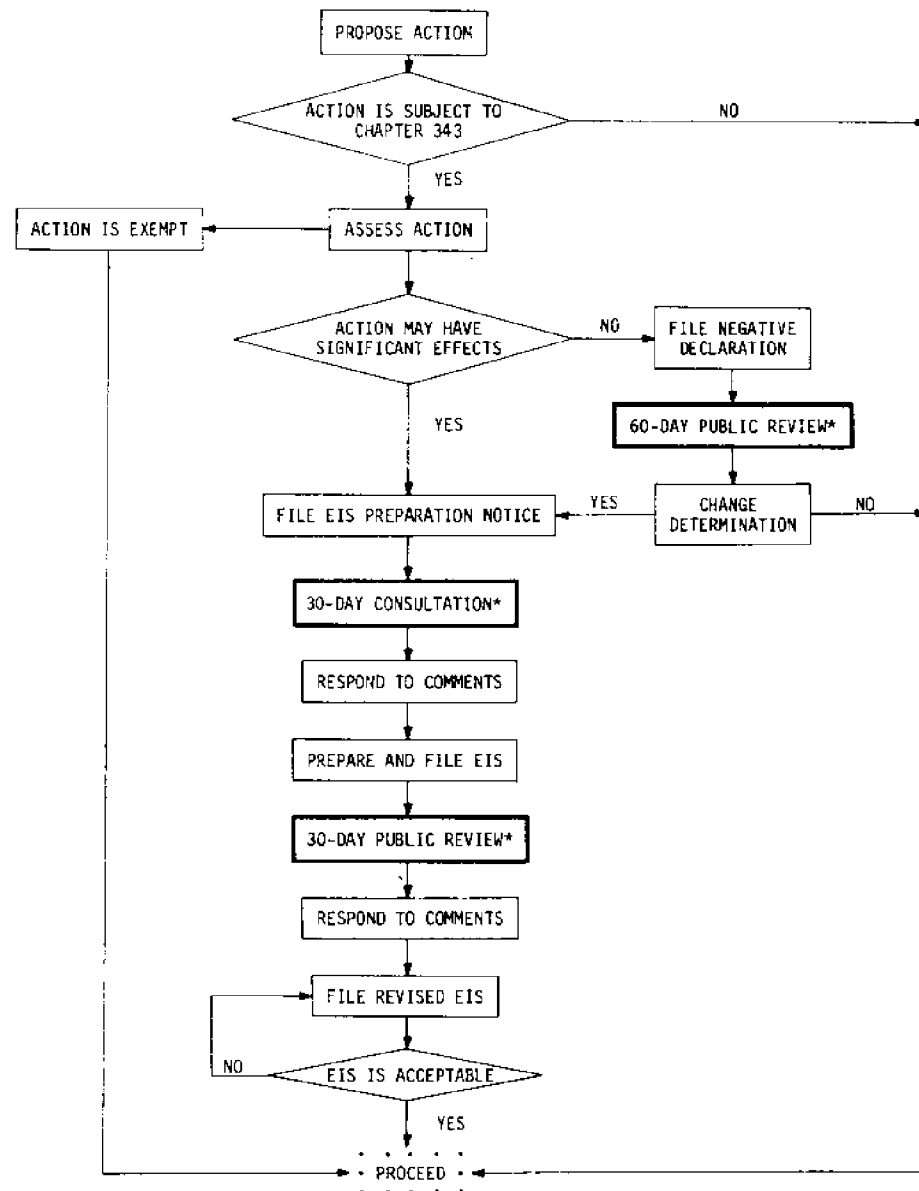
The final step in deciding whether or not an EIS is required is to assess the significance of environmental impacts. In other words, how important are the environmental consequences of allowing a project to go ahead? The EIS regulation lists eleven examples of things to consider. For example, a project could be considered to have a significant effect if it: affects a flood plain or endangered species; threatens air or water quality; or increases the population. The EIS regulation avoids being too specific as each project must be judged on its own according to differing conditions in different locations and situations.

HOW DO YOU FIND OUT ABOUT NEW EIS'S?

When a proposing/approving agency decides on whether or not to require an EIS, that agency is required by law to notify the Environmental Quality Commission in writing.

If the agency decides that a proposed project may have a significant environmental effect and, therefore, requires an EIS, the notice is called an EIS Preparation Notice.

On the other hand, if the agency decides that a project will not have a significant environmental effect and, therefore, does not require an EIS, the notice is called a Negative Declaration. In the past,



* Opportunity for public review and comments
 Note: Figure courtesy of Office of Environmental Quality Control, State of Hawaii

Figure 1. Generalized EIS Process

the Negative Declaration was called a "non-impact statement."

The intent of these notices is to inform the EQC and the general public of an agency's decision to require or not require an EIS for a specific project. The notice must include: name of person or agency proposing the project; approving agency, if any; description of project and affected environment; summary of impacts; and alternatives considered. Most importantly, the notice must state whether or not an EIS is required and the reasons for the agency's decision.

The notice is published by the EQC in its semi-monthly newsletter, the *EQC Bulletin*, which is available without cost to anyone requesting to be placed on the mailing list. The *EQC Bulletin* lists all projects for which EIS's are being written, EIS's being reviewed, and completed EIS's. The *EQC Bulletin* also lists Negative Declarations for projects not requiring EIS's. The *EQC Bulletin* is the best way to find out what's happening with various proposed projects throughout the state.

EQC BULLETIN MAILING LIST

Note: To get on the EQC mailing list, write or call the Environmental Quality Commission (see Appendix B for their address and phone number).

HOW TO HELP WRITE AN EIS

The EIS regulation requires that the EIS preparer "consult" with agencies, citizen groups, and interested persons. The purpose of the consultation is to make sure that environmental concerns are taken into account as early as possible in planning a project. An EIS would be less useful if a project were too far along in its planning. If environmental concerns were raised early enough, however, a project could be changed to eliminate or minimize specific problems.

If you want to be "consulted" in the early stages of the EIS, you must request to be "consulted" within

30 days after the *EQC Bulletin* announces that an EIS will be prepared. In other words, if the January 8 *Bulletin* announces an EIS Preparation Notice for a private subdivision, you must request to be "consulted" no later than February 7. If for some reason, however, you are not involved at all in the consultation phase, you may still comment on the EIS itself during the public review (discussed in section on "How to Review an EIS").

Why is consultation important to you? The consultation phase allows you to tell the EIS writer what you believe are major concerns and, therefore, should be fully discussed in the EIS. For example, if there is an EIS Preparation Notice for a new highway in your community, you can suggest that the EIS discuss noise impact, air pollution, traffic congestion, safety, and other concerns. In this way, these concerns will be addressed in the EIS before going out to public review.

The EIS regulation requires that the proposing agency or applicant request comments from interested persons. For example, if you had requested to be "consulted," you should receive a written request for comments and a copy of the EIS Preparation Notice. The notice will provide you with basic information regarding the proposed project.

People being "consulted" have thirty days to send in written comments. This period can be extended for another thirty days. The proposing agency or applicant must respond to each comment before officially filing the actual EIS.

HOW TO REVIEW AN EIS

After consulting agencies, groups, and individuals, the EIS writer then completes the EIS and files it with the Environmental Quality Commission. The EQC then publishes, in its *Bulletin*, that the EIS is available for public review. From the time of publication, the public has thirty days to comment on the EIS (in certain cases, the review period may be longer). Copies

of the EIS are usually available at public libraries in the areas to be affected. Limited copies are often available to individuals upon request.

By law, an EIS must contain the following information:

- * A summary of the EIS
- * A description of the project and the affected environment
- * The relationship of the project to land use in the area
- * The impact the project will have on the environment
- * Adverse impacts which cannot be avoided
- * Alternatives to the project (including no action) and impacts of the alternatives
- * Measures to minimize adverse impacts
- * "Trade-offs" of benefits against adverse affects
- * A list of people "consulted" and their comments
- * A summary of unresolved issues

Some questions to ask yourself

As stated earlier, the basic purpose of an EIS is to improve the quality of information available to persons deciding on projects. Therefore, in reviewing an EIS, there are a number of basic questions which need to be answered:

1. Is the project adequately described? Does the EIS enable you to fully understand what the project is all about?
2. Is the surrounding environment adequately described? Are you able to understand how the project relates to its surroundings?
3. Are all of the possible impacts adequately described? Are there any particular impacts which are not discussed at all, or superficially discussed? Are there any assumptions which appear unreasonable? Is there adequate information in the EIS to support conclusions?
4. Are alternatives to the proposed project adequately explored? Are there other ways to

carry out the project which may be less damaging to the environment? Are different designs or approaches discussed sufficiently? What basic improvements can you suggest?

5. What new data or information can you provide that will shed light on possible environmental impacts or other alternatives which may lessen impacts? There is a lot of truth in the adage that "local people know best." Residents often know local conditions from years of personal experience. This type of input can sometimes be just as valuable as technical studies.

HOW TO SEND IN YOUR COMMENTS

Once you have reviewed the EIS, you may wish to send in written comments. The EIS law allows thirty days for submitting comments after the *EQC Bulletin* publishes the availability of an EIS for public review. (Note: In certain cases, the review period may be longer.)

AGENCY ACTIONS. For actions proposed by state or county agencies, written comments should be mailed to:

- * The Governor's Office of Environmental Quality Control (OEQC) for state projects
- * The appropriate mayor's office for county projects.

In either case, a copy should also be sent to the proposing agency.

APPLICANT ACTIONS. For actions proposed by an applicant, comments should be mailed to the state or county agency which required the EIS. A copy should also be sent to the applicant.

Note: On each EIS, the Environmental Quality Commission indicates where comments should be sent. This should help you in knowing specifically where to send them.

After you have sent in your comments, the EIS writer must respond to your comments in writing within fourteen days after the review period. The response must explain what was done with your comments. These comments and responses must be included in the final version of the EIS.

"ACCEPTING" THE EIS

The law requires that each EIS must be "accepted" before the project can proceed. This means that all procedures have been followed, the EIS content is adequate, and all review comments/responses have been considered.

EIS "ACCEPTANCE" AND PROJECT "APPROVAL"

Note: There is a distinction between EIS acceptance and project approval. EIS acceptance means that an EIS is an adequate information document. Project approval means that, based on all information available, the project itself may proceed. An acceptable EIS does not necessarily mean that the project itself should be approved.

Who can "accept" an EIS?

The EIS law states that only certain people have the authority to "accept" EIS's.

STATE PROJECTS. For actions involving state money or land, the Governor is authorized to "accept" the EIS. In practice, the Governor's Office of Environmental Quality Control (OEQC) makes a recommendation to the Governor for EIS's regarding state projects.

COUNTY PROJECTS. For actions involving only county land or money, the mayor of the appropriate county has the "acceptance" authority. The mayor may delegate this authority to a personal representative (such as a department head).

APPLICANT PROJECTS. For private actions which require approval from a state or county agency, the

approving agency has the "acceptance" authority. The agency has sixty days from the time the EIS was officially filed to "accept" the EIS.

THE EIS AND PROJECT APPROVAL

It is important to remember that once an EIS is required, the EIS must be properly "accepted" before the project can go ahead. It is also important to note that "acceptance" of the EIS is not the same as approving the project. In other words, it is possible to have an "accepted" EIS which adequately discusses environmental impacts and alternatives--and have the project itself disapproved.

Once the EIS is "accepted," the next step is to decide on the project itself. For state or county projects, the proposing agency can decide to: go ahead with the project as originally planned; change its plans; or even stop the project. If the project is proposed by a private applicant, the approving agency must decide whether or not to approve the project; this could be done through issuance or denial of a permit or some other kind of governmental approval.

This means that once you are satisfied that the EIS is adequate, you may need to follow decisions on the project itself. That is, it may be necessary to follow up on the EIS to make sure that the project decision satisfies you. For example, in many cases, information meetings and public hearings are held in conjunction with the EIS procedures. You may wish to attend information meetings to become more familiar with the proposed project. You may wish to present written or oral testimony at official public hearings. Finally, you may want to write or call the appropriate governmental agency or legislator to present your point of view. In any case, a well-written EIS may be helpful to you in better understanding a proposed project and its environmental impacts. More importantly, an EIS that is written while a project is being planned will help to assure that alternatives and impacts are

considered in planning the project. In other words, EIS's should be used to help plan a project, rather than be done after everything has been decided upon.

THE EIS AND YOU

Hopefully, you now have a better understanding of how you can become involved in the EIS process. The important thing to remember is that the earlier you get involved, the better it is for everyone. As a project gets further along in planning, it gets more difficult to change directions or to halt harmful projects. The sooner problems are pointed out, the easier it is to find ways of avoiding such problems.

There are several things to remember which may help to make EIS's work for you and your community or organization:

- * Watch the newspapers for projects coming up in your area; find out whether or not an EIS is required.
- * If an EIS is not required and you think one should be, find out why it is not required.
- * Get on the *EQC Bulletin* mailing list to find out about Negative Declarations, EIS Preparation Notices, and EIS's being reviewed.
- * Request to be "consulted" on EIS's for projects which concern you.
- * Send in written comments when "consulted" and make sure that the response to your comments is adequate.
- * Send in written comments on the EIS and make sure that the response to your comments is adequate.
- * Follow up on the EIS acceptance and the project approval.

By letting EIS's work for you, you can help to anticipate and avoid problems rather than react to problems as they happen. Also, you will have a way to make your concerns known to the people who must decide on projects.

APPENDICES

Appendix A: Types of EIS's in Hawaii

CHAPTER 343

EIS's are required by Act 246 of 1974. Basically, state/county agencies and private applicants are subject to this law. This handbook focuses on the process and requirements of this law.

NATIONAL ENVIRONMENTAL POLICY ACT

NEPA environmental impact statements are required for certain federal projects in Hawaii. For example, NEPA EIS's were prepared for the H-3 interstate highway, the Reef Runway, Kauai Belt Road, and Honokohau Boat Harbor. NEPA EIS's generally go through a draft EIS stage, public hearings, and a final EIS stage. Copies of the draft and final EIS are transmitted to the President's Council on Environmental Quality (CEQ). Unlike the state's process, NEPA EIS's are not "accepted"; however, the CEQ can question the adequacy of an EIS. Certain federal EIS's are reviewed by the Statewide Clearinghouse in the Department of Planning and Economic Development for federal projects on the neighbor islands; and the Metropolitan Clearinghouse in the Department of General Planning, City and County of Honolulu, for federal projects on Oahu. Federal EIS's are reviewed when possible by the Governor's Office of Environmental Quality Control. Also, federal EIS's are publicized in the *EQC Bulletin*.

SPECIAL MANAGEMENT AREA

The Shoreline Protection Act of 1975 (Act 176) authorized each county to establish a special management area within which special permits are required for certain types of development.

This permit system was made more permanent by the Hawaii Coastal Zone Management Act of 1977. The City and County of Honolulu, in its Ordinance 4529 (as amended by Ord. 77-100, approved October 19, 1977), specifically authorizes EIS's for projects anywhere in

the special management area. The SMA generally goes inland 100 yards from the shoreline (as opposed to 20 to 40 feet for the "shoreline setback area") with exceptions such as at Heeia and Kawainui Marshes. If the state EIS law does not apply, the county is empowered to require an EIS under its own ordinance. The *EQC Bulletin* is now publishing the availability of EIS's required by the City and County of Honolulu for shoreline permits.

Appendix B: Agencies to Contact for Information

ENVIRONMENTAL QUALITY COMMISSION

Address: 550 Halekauwila Street, Room 301
Honolulu, Hawaii 96813
Phone: 548-6915

Contact the EQC for information on:

- * The EIS law, EQC rules and regulations, and other legal/procedural questions (e.g., attorney general opinions)
- * EIS Preparation Notices
- * EQC Meetings and agenda
- * Negative Declarations
- * EIS's available for public review and status of EIS's
- * *EQC Bulletin*

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Address: 550 Halekauwila Street, Room 301
Honolulu, Hawaii 96813
Phone: 548-6915

Contact OEQC for information on:

- * EIS's for state agency projects and federal projects (NEPA EIS's) being reviewed by OEQC
- * General information on environmental matters
- * EIS seminars

UH SEA GRANT/MARINE ADVISORY PROGRAM

Address: University of Hawaii
252-B Spalding Hall
2540 Maile Way
Honolulu, Hawaii 96822
Phone: 948-8191 or 948-8262

Contact the Marine Advisory Program for:

- * Locating sources of information relating to the marine and coastal environments
- * General information on approvals needed for coastal development